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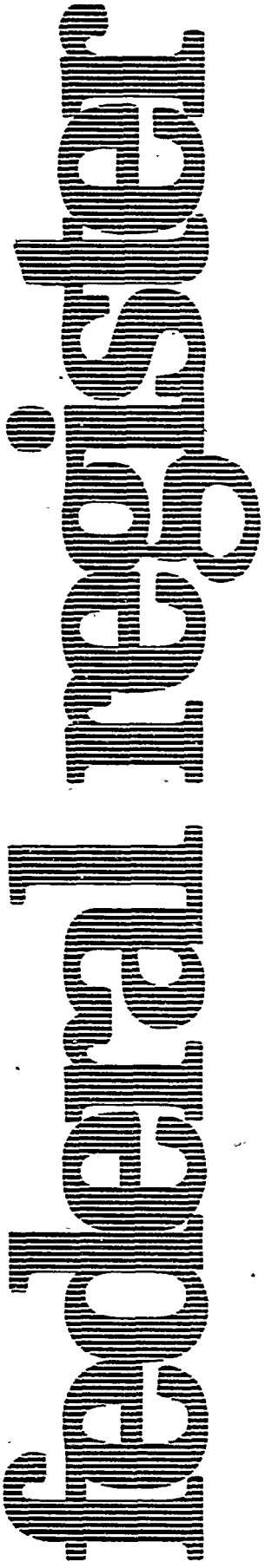

Book 1 of 2 Books
Friday, November 30, 1979

Highlights

Briefings on How to Use the Federal Register—For details on briefings in Washington, D.C. and Dallas, Texas, see announcement in the Reader Aids Section at the end of this issue.

69032 Supplemental Energy Allowance Program HEW/SSA announces award of $1.2 billion in funds for distribution by HEW and States to aid low-income persons during the winter heating season; effective 11-30-79

69044 Graduate Research Fellowship Program Justice/LEAA announces grant competition for fiscal year 1980; concept papers by 1-2-80

69029 Rehabilitation Long-Term Training Program HEW/HDSO announces the acceptance of grants for fiscal year 1980; apply by 2-1 and/or 2-29-80 based upon area of discipline

69254 Child Nutrition USDA/FNS proposes changes in the requirements for the special supplemental food program for Women, Infants and Children (WIC Program) and an extension of the program is also proposed through fiscal year 1982; comments by 1-28-80 (Part VIII of this issue)

68822 Dental X-Rays HEW/FDA adopts an amendment which will reduce unnecessary x-radiation exposure to patients that can result from low voltage, low filtration systems; effective 12-1-80

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Area Code 202-523-5240

Highlights

68822 **Cosmetic Labeling** HEW/FDA revokes partial stay of regulations permitting certain ingredients to be listed without respect to order of predominance; effective 11-30-79

69210 **Recombinant DNA Molecules** HEW/NIH issues notice setting forth guidelines for research (3 documents) (Part VII of this issue)

68858 **Age Discrimination in Employment** EEOC proposes to adopt certain interpretations of the Act; comments by 1-29-80

68802 **Federal Employees** OPM amends benefit regulations to permit an enrollee with high option enrollment to change to a low option enrollment anytime after 31 days before he/she is eligible for coverage under the Social Security Act (Medicare); effective 12-31-79

68798 **Federal Employees** OPM publishes rules in order to implement flexible and compressed work schedules; effective 12-31-79

68872 **Federal Acquisition** OMB makes available regulations regarding excess personal property, exchange or sale of non-excess personal property, and contract cost principles and procedures applicability; comments by 1-30-80

68855 **Domestic Crude Oil Allocation** DOE/ERA proposes to adopt amendments which will extend the effects of the current provisions of the program; comments by 12-31-79

68862 **Improving Government Regulations** DOD publishes rules which are under review; next semiannual agenda 5-30-80

68889 **Improving Government Regulations** GSA announces significant regulatory actions planned for a 6-month period

68946, 68947 **Privacy** DOD publishes documents affecting systems of records (2 documents)

69073 **Sunshine Act Meetings**

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69122 **Part IV, EPA**
69130 **Part V, USDA/FmHA**
69206 **Part VI, Interior/FWS**
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Miscellaneous Revocations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revokes certain positions because the need for the positions no longer exists: Special Assistant to the Executive Associate (Assistant) Director for Budget, Office of Management and Budget, Executive Office of the President; one Private Secretary to the Deputy Director for Public Affairs, Department of Agriculture; one Confidential Assistant to the Administrator, Food Safety and Quality Service, Department of Agriculture; one International Athletic Exchange Officer, International Communications Agency; two Assistants to the Secretary, Department of Energy; one Private Secretary to the Chairman and one Private Secretary to each of the other four Commissioners, Indian Claims Commission; one Special Assistant to the Chairman and one Special Assistant to each of three Renegotiation Board Members; one Secretary to the Chairman, one Secretary to each of three Board Members of the Renegotiation Board; one Special Assistant to the Assistant Secretary for Neighborhood Organizations, Voluntary Associations, and Consumer Protection, Department of Housing and Urban Development.

EFFECTIVE DATE: November 30, 1979.

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

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

Accordingly, 5 CFR 213.3303(a)(19), 213.3313(c)(12), 213.3328(f), 213.3345 and 213.3355 are revoked; and 213.3313(v)(2), 213.3331(a) (6) and (7), and 213.3384 (l)(2) are revised as set out below:

§ 213.3303 Executive Office of the President.

(a) *Office of Management and Budget.*
* * *

(19) [Revoked]
* * * * *

§ 213.3313 Department of Agriculture.
* * * * *

(c) *Office of the Deputy Secretary.*
* * *

(12) [Revoked]
* * * * *

(v) *Food Safety and Quality Service.*
* * *

(2) Three Confidential Assistants to the Administrator.
* * * * *

§ 213.3328 International Communications Agency.
* * * * *

(f) [Revoked]
* * * * *

§ 213.3331 Department of Energy.

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

(6) One Confidential Assistant (Receptionist) to the Secretary.

(7) Two Assistants to the Secretary.
* * * * *

§ 213.3345 [Revoked]
* * * * *

§ 213.3355 [Revoked]
* * * * *

§ 213.3384 Department of Housing and Urban Development.
* * * * *

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

(2) One Special Assistant to the Assistant Secretary.

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

[FR Doc. 79-36719 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Agriculture

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the title of one position of Confidential Assistant to the Assistant Secretary for Marketing Services, Department of Agriculture, to Confidential Assistant to the Assistant Secretary for Marketing and Transportation Services to reflect the current title of the superior.

EFFECTIVE DATE: August 24, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, (202) 632–4533. On position content: Phyllis Mowery, Department of Agriculture, (202) 447–7131.

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

Accordingly, 5 CFR 213.3313(a)(9) is revised as set out below:

§ 213.3313 Department of Agriculture.

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

(9) One Confidential Assistant each to the Assistant Secretary for Food and Consumer Services and the Assistant Secretary for Marketing and Transportation Services.

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

[FR Doc. 79-36720 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service: Civil Aeronautics Board

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service GS–15 and below positions, the functions of which will not be transferring to other Federal agencies as mandated by the Airline Deregulation Act of 1978, in the Civil Aeronautics Board. The authority may not be used for new appointments to any positions identified for transfer of

function. Employment under this authority may not exceed December 31, 1984. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: September 24, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: Michael Sherwin, Civil Aeronautics Board, 202–673–5017.

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

Accordingly, 5 CFR 213.3140 is added as set out below:

§ 213.3140 Civil Aeronautics Board.

(a) Not to exceed 40% of the Civil Aeronautics Board's authorized GS–15 and below positions. This authority may not be used for new appointments to positions which are identified for transfer to other Federal agencies as authorized under the mandates of the Airline Deregulation Act of 1978. Employment under this authority may not exceed December 31, 1984.

(5 U.S.C. 3301, 3302; EO 10377, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc 79-36721 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of the Navy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service all civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia. This exception is granted because it is impracticable to hold competitive examinations for these positions.

EFFECTIVE DATE: September 4, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: Hal Boyles, Department of the Navy, 202–694–5742.

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

Accordingly, 5 CFR 213.3208(b) is added as set out below:

§ 213.3208 Department of the Navy.

* * * * *

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

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

[FR Doc. 79-36722 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Entire Executive Civil Service

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: Schedule A authority for appointment of bona fide students and science or mathematics teachers for up to 1,040 hours a year is amended to prohibit its use to extend the time limits contained in any other authority and to clarify that appointments must terminate when employees cease to be bona fide students or teachers.

EFFECTIVE DATE: August 10, 1979.

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

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

Accordingly, 5 CFR 213.3102(q) is revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(q) Positions at grade GS–7 and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be: (1) Bona fide high school science or mathematics teachers or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No person shall be employed under this provision in (i) positions of a routine clerical type or (ii) in excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS–4 and below which are established in connection with associate degree cooperative education programs. Students enrolled in bachelor's degree cooperative education programs as defined in § 213.3202(a) shall not be employed under this provision. Appointments under this authority may be made only to positions for which qualification standards established under Part 302 of this chapter are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

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

[FR Doc. 79-36723 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; National Endowment for the Humanities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Two positions of Humanist Administrator, GS–1701–14 in the Center of Research Programs and in the General Research Program, Division of Research Grants, National Endowment for the Humanities are no longer excepted under Schedule A because it is practicable to examine for them; however, the positions are excepted under Schedule B because it is not practicable to hold a competitive examination for them.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: Nestor Sanchez, National Endowment for the Humanities, 202–724–0356.

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

Accordingly, 5 CFR 213.3182(b)(9) is revoked and 5 CFR 213.3282(b)(29) is added as follows:

§ 213.3182 National Foundation on the Arts and the Humanities.

* * * * *

(b) National Endowment for the Humanities

* * * * *

(9) [Revoked]

* * * * *

§ 213.3282 National Foundation on the Arts and the Humanities

* * * * *

(b) National Endowment for the Humanities

* * * * *

(29) Two positions of Humanist Administrator, GS–1701–14, in the Center of Research Programs and in the General Research Program, Division of Research Grants.

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

[FR Doc. 79-36727 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; National Foundation on the Arts and the Humanities; Correction

AGENCY: Office of Personnel Management.

ACTION: Correction to Final Rule.

SUMMARY: This final rule supersedes the document relating to one Schedule B position in the National Foundation on the Arts and the Humanities published at 44 FR 25394, May 1, 1979. The revised section shows grade level coverage and adds the word "Program" which was erroneously omitted.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: Alan L. Taylor, National Endowment for the Humanities, 202–724–0356.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3282(b)(27) is revised, as follows:

§ 213.3282 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.* * * *

* * * * *

(27) Until September 30, 1980, one position of Humanist Administrator, GS–14, Humanities Planning and Assessment Studies Program, Office of Planning and Policy Assessment.

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

[FR Doc. 79-36728 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service: Securities and Exchange Commission

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service two additional positions of accountant and auditor, GS–13 through GS–15, when filled by persons selected under the SEC Accounting Fellow program, with a service time limit not to exceed 3 months. These positions must be filled by either incoming or outgoing Fellows, to provide for transition and orientation. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: October 11, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: William Ford, Securities and Exchange Commission, 202–272–2520.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3130(c) is amended as set out below:

§ 213.3130 Securities and Exchange Commission.

* * * * *

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Four positions, for employment of any one individual not to exceed 2 years; and (2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

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

[FR Doc. 79-36729 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Federal Emergency Management Agency

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to reflect an organizational redesignation of certain positions, which are excepted under Schedule C, to the recently established Federal Emergency Management Agency. These positions include the following which formerly existed in other agencies but which are hereby transferred to the Federal Emergency Management Agency: one Special Assistant, one Labor Liaison Advisor, and two Staff Assistants to the Director of the Defense Civil Preparedness Agency, Department of Defense; one Confidential Assistant and one Private Secretary to the Administrator, National Fire Prevention and Control Administration, Department of Commerce; three Confidential Assistants to the Director, Federal Preparedness Agency, General Services Administration; and one Secretary and two Special Assistants to the Administrator, Federal Insurance Administration, Department of Housing and Urban Development; one Private Secretary and two Special Assistants to the Administrator, Federal Disaster Assistance Administration, Department of Housing and Urban Development. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: September 4, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, (202) 632–4533. On position content: Albert Maltz, Federal Emergency Management Agency, (202) 235–2473.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3306(e), 213.3314(u) (1) and (3), 213.3337(e) and 213.3384 (a) (14), (17), (h), and (o) are revoked and 213.3395 (c), (d), (e), (f), and (g) are added as set out below:

§ 213.3306 Department of Defense.

* * * * *

(e) [Revoked]

* * * * *

§ 213.3314 Department of Commerce.

* * * * *

(u) *National Fire Prevention and Control Administration.* (1) [Revoked]

* * * * *

(3) [Revoked]

* * * * *

§ 213.3337 General Services Administration.

* * * * *

(e) [Revoked]

* * * * *

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.*

* * * * *

(14) [Revoked]

* * * * *

(17) [Revoked]

* * * * *

(h) [Revoked]

* * * * *

(o) [Revoked]

* * * * *

§ 213.3395 Federal Emergency Management Agency.

* * * * *

(c) *Civil Preparedness Agency.* (1) One Special Assistant, one Labor Liaison Advisor and two Staff Assistants to the Director.

(d) *National Fire Prevention and Control Administration.* (1) One Private Secretary and one Confidential Assistant to the Administrator.

(e) *Federal Preparedness Agency.* (1) Three Confidential Assistants to the Director.

(f) *Federal Insurance Administration.* (1) One Secretary and two Special Assistants to the Administrator.

(g) *Federal Disaster Assistance Administration.* (1) One Private Secretary and two Special Assistants to the Administrator.

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

[FR Doc. 79-36724 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Confidential Assistant to the Associate Commissioner for Governmental Affairs at the Social Security Administration because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: September 14, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202–632–4533. On position content: Emma Mapp, Department of Health, Education, and Welfare, 202–245–2015.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3316(l)(4) is added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(l) *Social Security Administration.*

* * * * *

(4) One Confidential Assistant to the Associate Commissioner for Governmental Affairs.

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

[FR Doc. 79-36725 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; National Endowment for the Arts

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule A the positions of Director for Partnership Programming, Director for State Programs, and Director for Artists-in-Schools Programs in the National Endowment for the Arts because examination for the positions is impracticable.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT:

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

On position content contact: Thomas Johnston, National Endowment for the Arts, 202–632–4853.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3182(a) (36), (37), and (38) are added as set out below:

§ 213.3182 National Foundation on the Arts and the Humanities.

(a) National Endowment for the Arts.

* * * * *

(36) Until September 30, 1980, one Director for Partnership Programming.

(37) Until September 30, 1980, one Director for State Programs.

(38) Until September 30, 1980, one Director for Artists-in-Schools Programs.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218)

[FR Doc. 79-36727 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of the Interior

Correction

In FR Doc. 79-29547, appearing in the issue of Tuesday, September 25, 1979, on page 55142, make the following corrections:

(1) The amendatory language is corrected to read, "Accordingly 5 CFR 213.3312(l)(1) is added as set out below:".

(2) In the text of the amendment, under § 213.3312, the first paragraph now reading (1) is corrected to read (l) and the second paragraph now reading (l) is corrected to read (1).

BILLING CODE 1505-01-M

5 CFR Part 213

Excepted Service; Department of the Treasury

Correction

In FR Doc. 79-34002, appearing in the issue of Friday, November 2, 1979, on page 63079, correct the text of § 213.3105 by changing the designation of the first and second paragraphs from (1) and (i) to (i) and (1) respectively.

BILLING CODE 1505-01-M

5 CFR Part 620

Alternative Work Schedules Experiments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Director of the Office of Personnel Management publishes regulations to implement the Federal Employees Flexible and Compressed Work Schedules Act of 1978, Pub. L. 95–390.

These regulations supplement the Act and provide a basic framework within which agencies may establish experiments with flexible and compressed work schedules, without regard to the normal scheduling

requirements of section 6101 of title 5, United States Code. Except to the extent provided in the Act and these regulations, employees covered under the experimental program otherwise retain existing statutory entitlements to premium pay, leave, and holidays.

DATE: These regulations are effective on December 31, 1979 and expire on March 28, 1982.

FOR FURTHER INFORMATION CONTACT: James J. Hesling, (202) 632–5604.

SUPPLEMENTARY INFORMATION:

Proposed regulations were published in the Federal Register on May 22, 1979 (44 FR 29673–29676). No substantive change has been made to the regulations. Certain editorial changes have been made in the regulations.

Analysis of comments

The proposed regulations provided a 60-day period of public comment. Nine comments were received. A summary of the major points follows:

(1) Coverage. One comment suggested that it be stressed that existing authority to vary work schedules under section 6101 of title 5, United States Code, is not subject to termination at the end of the 3-year period of experimentation authorized by Pub. L. 95–390. The authority of agencies to adopt variations from normal work schedules under permanent law is stated in § 620.302, and this authority, deriving from the permanent provisions of title 5, United States Code, is not subject to termination at the end of the 3-year period of experimentation. While no change to the regulation was made based on this comment, a discussion of this subject will be published in the Federal Personnel Manual.

(2) Time Accounting. One comment suggested that the "honor system" of time accounting be identified as unacceptable, because it fails to provide affirmative evidence that the employee has worked the proper number of hours. The so called "honor system" is a time accounting form maintained by the individual employee from which his or her Time and Attendance (T&A) card is prepared and certified by the employee's supervisor. Such a time accounting system meets General Accounting Office standards that the official certifying T&A cards have "affirmative" knowledge that an employee is entitled to his or her normal pay, or to a greater or lesser amount. The so called "honor system" is one of several acceptable systems of time accounting for use by Federal agencies. OPM does not believe that any system should be prejudged in advance of experimentation as to its efficacy in tracking employee work time; therefore, no change was made to the regulations based on this comment.

One comment noted that proposed § 620.303, in conjunction with section 105 of Pub. L. 95–390, could be construed as requiring mechanical timekeeping devices. It was suggested that it be specifically stated that time clocks or other mechanical timekeeping devices are not required but instead are optional. It is not the intention of the regulation to require any particular type of time accounting system or to rule out any time accounting system that meets General Accounting Office time accounting standards. For these reasons, we have not revised this regulation. However, additional guidance on time accounting for agencies participating in Alternative Work Schedules experiments will be published in the Federal Personnel Manual.

(3) Limitation on compensatory time off. Four comments objected to the requirement limiting the accrual of compensatory time to 10 hours for employees participating in flexitime programs under Pub. L. 95–390.

The comments questioned the rationale for the regulation and objected to a limitation on management's traditional flexibility to authorize compensatory time for employees in lieu of overtime pay for irregular or occasional overtime work. Under section 103 of Pub. L. 95–390, agencies are extended the authority to grant employees who are in flexitime programs compensatory time off for *regulatory scheduled* overtime work in addition to compensatory time for irregular or occasional overtime work. Before Pub. L. 95–390 was enacted, concerns were expressed that this new authority could lead to abuse. As a result, the Civil Service Commission (now the Office of Personnel Management) made a commitment before the enactment of Pub. L. 95–390 to provide by regulation for a limit on the use of compensatory time an employee could accrue under this provision.

(4) Holidays for part-time employees on flexible schedules. One comment suggested that, instead of dividing the number of hours in the part-time employee's basic work requirement by the number of days in the employee's tour of duty (including days on which only flexible hours are scheduled), only days on which core hours are scheduled and flexible days which are regularly used by the part-time employee be used in arriving at the part-time employee's holiday entitlement. Adoption of the suggestion would lead to complications in administration of a program because it would require determination of the flexible days the part-time employee regularly uses. In addition, if the suggestion were adopted, the part-time employee would receive a greater holiday benefit when the holiday fell on a core day; however, the employee would not receive any holiday benefit when a holiday fell on any other day. Therefore, the suggestion was not adopted, since we believe the regulation provides the greatest equity for a part-time employee and is simpler to administer.

Text of the Law

For the use of readers in understanding the regulations, the text of Pub. L. 95–390 (except Title IV, which does not relate to the Alternative Work Schedules Experiments) follows:

Note.—Pursuant to Reorganization Plan No. 2 of 1978, the references in Pub. L. 95–390 to the now defunct United States Civil Service Commission are followed by the name of the appropriate successor organization, i.e., the Office of Personnel Management ("Office") or the Merit Systems Protection Board ("Board").

Short Title

Section 1. This Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1978".

Congressional Findings

Sec. 2. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

Definitions

Sec. 3. For purposes of this Act (other than title IV)—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

(2) the term "employ" has the meaning given it by section 2105 of title 5, United States Code;

(3) the term "Commission" ("Office or Board") means the United States Civil Service Commission (the "Office of Personnel Management" or the "Merit Systems Protection Board" as appropriate); and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

Experimental Programs

Sec. 4. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 302 and the terms of any written agreement referred to in section 302(a), the Commission (Office) shall establish a program which provides for the conducting of experiments by the Commission (Office) under titles I and II of this Act. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under titles I and II of this Act. Such experiments shall be subject to such regulations as the Commission (Office) may prescribe under section 305 of this Act.

(b) The Commission (Office) shall, not later than 90 days after the effective date of this section establish a master plan which shall contain guidelines and criteria by which the Commission (Office) will study and evaluate experiments conducted under titles I and II of this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

(1) the efficiency of Government operations;
(2) mass transit facilities and traffic;
(3) levels of energy consumption;
(4) service to the public;
(5) increased opportunities for full-time and part-time employment; and
(6) individuals and families generally.

(c) The Commission (Office) shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this Act.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) would substantially disrupt the agency in carrying out its functions, such agency head shall request the Commission (Office) to exempt such agency from the requirements of any experiment conducted by the Commission (Office) under subsection (a). Such request shall be accompanied by a report detailing the reasons for such determination. The Commission (Office) shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government or the employees. The filing of such a request with the Commission (Office) shall exclude the agency from the experiment until the Commission (Office) has made its determination or until 180 days after the date the request is filed, whichever first occurs.

TITLE I—FLEXIBLE SCHEDULING OF WORK HOURS

Definitions

Sec. 101. For purposes of this title—

(1) the term "credit hours" means any hours, within a flexible schedule established under this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and
(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

Flexible Scheduling Experiments

Sec. 102. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and
(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employees position are fulfilled.

(b) Notwithstanding any other provision of this Act, but subject to the terms of any written agreement under section 302(a)—

(1) any experiment under subsection (a) of this section may be terminated by the Commission (Office) if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or
(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs bcause of such participation, such agency head may—
  (A) restrict the employees' choice of arrival and departure time,
  (B) restrict the use of credit hours, or
  (C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) shall terminate not later than the end of the 3-year period which begins on the effective date of this title.

Computation of Premium Pay

Sec. 103. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 102—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and not withstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended, or any other provision of law; or
(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 106 or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized; except that—

(A) if an employee is on a flexible schedule under which—
  (i) the number of hours during which such employee must be present for work, plus
  (ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and 4107(e)(2) of title 38, United States Code, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this title—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or
(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

Holidays

Sec. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Commission (Office)).

Time-Recording Devices

Sec. 105. Notwithstanding section 6106 of title 5, United States Code, the Commission (Office) or an agency may use recording clocks as part of its experiments under this title.

Credit Hours; Accumulation and Compensation

Sec. 106. (a) Subject to any limitation prescribed by the Commission (Office) or the agency, a full-time employee on a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a beweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employe who is on a flexible schedule experiment under this title and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

TITLE II—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

Definitions

Sec. 201. For purposes of this title—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

(2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compressed schedule.

Compressed Schedule Experiments

Sec. 202. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such experiment,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this Act, but subject to the terms of any written agreement under section 302(a), any experiment under subsection (a) may be terminated by the Commission (Office), or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) shall terminate not later than the end of the 3-year period which begins on the effective date of this title.

Computation of Premium Pay

Sec. 203. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended, or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended, whichever provisions are more beneficial to the employee.

TITLE III—ADMINISTRATIVE PROVISIONS

Administration of Leave and Retirement Provisions

Sec. 301. For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

Application of Experiments in the Case of Negotiated Contracts

Sec. 302. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under title I or II of this Act except to the extent expressly provided under a written agreement between the agency and such organization.

(b) The Commission (Office) or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisons which are inconsistent with the provisions of section 103 or 203 of this Act, as applicable.

Prohibition of Coercion

Sec. 303. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under title I to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 202(b)(1) to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 202(b)(2).

For the purpose of the preceding sentence, the term "intimidate, threaten, or coerce" includes but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(b) Any employee who violates the provisions of subsection (a) shall, upon a final order of the Commission (Board), be—

(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Commission (Board) may prescribe; or

(2) suspended without pay from such employee's position for such period as the Commission (Board) may prescribe; or

(3) disciplined in such other manner as the Commission (Board) shall deem appropriate.

The Commission (Board) shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded

an employee subject to removal or suspension under subchaper III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

Reports

Sec. 304. Not later than 2½ years after the effective date of titles I and II of this Act, the Commission (Office) shall—
(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this Act, and
(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.
The Commission (Office) shall prepare a final report with regard to experiments conducted under this Act and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

Regulations

Sec. 305. The Commission (Office) shall prescribe regulations necessary for the administration of the foregoing provisions of this Act.

Effective Date

Sec. 306. The provisions of section 4 and titles I and II of this Act shall take effect on the 180th day after—
(1) the date of the enactment of this Act, or
(2) October 1, 1978,
whichever date is later.

Accordingly, the Office of Personnel Management is adding to Title 5 of the Code of Federal Regulations a new Part 620, as set forth below:

PART 620—ALTERNATIVE WORK SCHEDULES EXPERIMENTS

Sec.
620.101 General.
620.102 Coverage.
620.103 Requirement for time-accounting method.
620.104 Limitation on compensatory time off.
620.105 Holiday for part-time employees on flexible schedules.
620.106 Required participation.

Appendix A—Master Plan [Reserved].[1]

Authority.—Titles I–III, Pub. L. 95–390, 92 Stat. 756 (5 U.S.C. 6101 note); sec. 102, Reorg. Plan No. 2 of 1978.

§ 620.101 General.

This part contains regulatory requirements prescribed by the Office of Personnel Management to implement certain provisions of Pub. L. 95–390. These regulations supplement Pub. L. 95–390, and must be read together with that law.

[1] The Master Plan, when approved in final, will be published as Appendix A to Part 620.

§ 620.102 Coverage.

The provisions of Pub. L. 95–390 and the regulations contained in this subpart apply only to the alternative work schedule experiments established under the authority of Pub. L. 95–390. Agencies continue to have the authority under section 6101 of title 5, United States Code, to adopt certain variations from normal work schedules without regard to the provisions of Pub. L. 95–390. However, any such variations not established in full accordance with the provisions of Pub. L. 95–390 and this part may not utilize any of the provisions of Pub. L. 95–390, including the provisions relating to computation of premium pay and holidays.

§ 620.103 Requirement for time-accounting method.

An agency conducting an alternative work schedule experiment under Pub. L. 95–390 must include in that experiment a time-accounting method that will provide affirmative evidence that each employee subject to the experiment has worked the proper number of hours.

§ 620.104 Limitation on compensatory time off.

In carrying out section 103(a) of Pub. L. 95–390, an agency may not allow an employee on a flexible schedule to accrue, at any time, more than 10 hours of compensatory time in lieu of payment for regularly or irregularly scheduled overtime work.

§ 620.105 Holiday for part-time employees on flexible schedules.

For purposes of section 104 of Pub. L. 95–390, if a holiday occurs on a day within a part-time employee's scheduled tour of duty (including those days on which flexible hours are scheduled) the employee is entitled to basic pay with respect to that holiday for a number of hours equal to the number of hours which the employee is scheduled to work in order to fulfill his or her basic work requirement during the biweekly pay period, divided by the number of days which comprise the employee's tour or tours of duty (including those days on which only flexible hours are scheduled) for the biweekly pay period.

§ 620.106 Required participation.

If determined necessary in order to carry out the mandate of Congress to conduct a comprehensive alternative work schedules experimental program, the Office of Personnel Management may require an agency or department to undertake an experiment that will be developed in conjunction with the Office of Personnel Management.

Appendix A—Master Plan [Reserved].

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

[FR Doc. 79-36897 Filed 11-29-79; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program; Opportunities to Register to Enroll and Change Enrollment

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: The Office of Personnel Management is amending the Federal Employees Health Benefits (FEHB) regulations to permit an enrollee with a high option FEHB enrollment to change to a low option enrollment at any time after 31 days before he or she is eligible for coverage under the title XVIII of the Social Security Act (Medicare).

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Edward G. Borchers, Issuances and Instructions Staff, Compensation Group, Room 4334, 1900 E St., NW., Washington, D.C. 20415, 202–632–4634.

SUPPLEMENTARY INFORMATION: On May 18, 1979, proposed rulemaking was published in the Federal Register (44 FR 29086), and comments from interested parties were invited for a 60-day period.

Although no opposition to the proposed amendment was made, concern was expressed by two respondents that in some cases the change to low option will become effective before coverage under Medicare begins, leaving the enrollee with a period of inadequate coverage.

One of the respondents suggested that the regulations be amended to provide that the change to low option be made effective the day Medicare coverage begins. (Under current regulation, the change would be the first day of the pay period following the pay period in which the registration to change to low option is received in the employing office or retirement system, if in pay status at that time.) However, while coverage under Medicare generally begins on the first day of the month in which the individual reaches age 65, many FEHB enrollees are paid on a biweekly basis. Such a change in the regulations would, therefore, require some changes to low option to be made effective in the middle of a pay period, which would create administrative difficulties for the payroll offices involved.

Since Medicare coverage begins on the first day of the month, the possibility of a period of inadequate coverage would exist only in cases where an enrollee is not paid on a monthly basis. The majority of enrollees making such changes will be Civil Service annuitants, who are paid on a monthly basis; therefore, there will only be a small number of cases which could result in a period of inadequate coverage. So that enrollees are aware of the consequences of having the low option become effective before Medicare coverage begins, information relating to this matter will, however, be included in the various informational issuances distributed to enrollees.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, § 890.301(n) of title 5, Code of Federal Regulations, is amended, as set out below:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(n) On becoming eligible for coverage under title XVIII of the Social Security Act. An enrolled employee or annuitant with a high option enrollment may register, at any time after the 31st day before he or she is eligible for coverage under title XVIII of the Social Security Act (Medicare), to change enrollment to the low option of any available plan under this part.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 79-36891 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1206

Interim Regulations for Expediting the Closure of Certain Board Meetings; Correction

AGENCY: Merit Systems Protection Board.

ACTION: Interim regulations: correction.

SUMMARY: In 44 FR 65048, November 9, 1979 the Merit Systems Protection Board issued regulations to provide interim procedures for closure of certain meetings of the Board. This document amends the language immediately preceding § 1206.9 and makes two minor changes in § 1206.9(a).

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

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

SUPPLEMENTARY INFORMATION: 1. On page 65048 the amendatory language in the sentence immediately preceding § 1206.9 is corrected to read as follows: Accordingly, Part 1206 is amended by adding § 1206.9 as follows:

2. Section 1206.9(a) is amended as follows:

* * * * *

(a) *Finding.* (1) The major part

* * * * *

(2) Absent a compelling

* * * * *

Issued November 21, 1979.

By Order of the Board.

Ruth T. Prokop,

Chairwoman, Merit Systems Protection Board.

[FR Doc. 79-36760 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

Foreign Quarantine Notices; Nursery Stock, Plants, and Seeds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations captioned "Subpart—Nursery Stock, Plants, and Seeds" in Chapter III, Title 7 of the Code of Federal Regulations, to delete subsoil from the list of approved packing materials for lily bulbs imported into the United States from Japan (including the Ryukyu Islands). This is necessary as an emergency measure in order to prevent the dissemination into the States, the District of Columbia, and certain Territories of the United States of the golden nematode and rice cyst nematode.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION: The provisions in § 319.37-16a(b) of the regulations in Title 7, Code of Federal Regulations, state that subsoil from Japan, including the Ryukyu Islands, is permitted to be used as packing material for lily bulbs imported from Japan into the States, the District of Columbia, and certain Territories of the United States (hereinafter referred to as the United States) if, among other things, the subsoil had been treated with an insecticide adequate to destroy *Phyllobrotica* spp. and other insect pests.

A document published in the Federal Register on June 15, 1979, (44 FR 34856-34882) proposed, among other things, to delete subsoil from the list of approved packing materials for lily bulbs imported into the United States from areas of Japan other than the Ryukyu Islands, and proposed to include certain subsoil in the list of approved packing materials for lily bulbs imported into the United States from the Ryukyu Islands in Japan.

However, on October 17, 1979, lily bulbs in subsoil from Japan were found upon inspection at the Port of New York to be contaminated with golden nematode *(Globodera rostochiensis* (Wollenweber) Behrens, 1975). The golden nematode is a plant pest which is not widely distributed within the United States and which attacks and substantially reduces the yield of potatoes, tomatoes, and eggplants.

Also, on October 26, 1979, lily bulbs in subsoil from Japan were found upon inspection at the Port of Miami to be contaminated with rice cyst nematode *(Heterodera oryzae* Luc and Berdon Brizuela, 1961). Rice cyst nematode is a plant pest which is not known to occur in the United States and which attacks and substantially reduces the yield of rice.

The golden nematode and rice cyst nematode occur in soil, including subsoil, and it is not known how widespread these plant pests occur in Japan. Therefore, it is necessary to delete subsoil from the list of approved packing materials for lily bulbs imported into the United States from any part of Japan. This is necessary because there does not appear to be any feasible method of inspection or treatment, or other procedures for preventing the possible introcuction of golden nematode or rice nematode in such subsoil. Consequently, pursuant to the provisions of the remaining regulations in "Subpart—Nursery Stock, Plants, and Seeds," lily bulbs from Japan must be free from sand, soil, and earth at the time of importation into the United States (See 7 CFR 319.37-15).

§ 319.37-16a [Amended]

Accordingly, paragraph (b) of § 319.37-16a of the regulations in "Subpart—Nursery Stock, Plants, and Seeds," Chapter III, Title 7 of the Code of Federal Regulations (7 CFR 319.37-16a(b)) is hereby revoked, and paragraphs (c), (d), and (e) of said § 319.37-16a are hereby redesignated as paragraphs (b), (c), and (d) respectively.

(Sec. 106, 71 Stat. 33, (7 U.S.C. 150ee); 37 FR 28464, 28477, as amended; 38 FR 19141)

Due to the possibility that golden nematode and rice cyst nematode could be introduced into the United States from lily bulbs in subsoil imported from Japan, an emergency situation exists requiring immediate action to prevent the introduction into the United States of these plant pests.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by James O. Lee, Jr., Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 26th day of November 1979.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-36849 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 725

Proclamation of Quotas for the 1980, 1981, and 1982 Marketing Years for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: With this rule, the Secretary of Agriculture, (1) proclaims quotas for the 1980, 1981, and 1982 marketing years, and (2) announces that the 1980 quota has been determined to be 1,095 million pounds, about the same as last year. The law requires that these announcements be made by December 1, 1979. The quota determination was made to maintain adequate supplies of flue-cured tobacco. The date of the referendum will be announced separate.

EFFECTIVE DATE: November 29, 1979.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, ASCS, Price Support and Loan Division, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6733.

SUPPLEMENTARY INFORMATION: 7 CFR 725.1 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), to proclaim quotas for flue-cured tobacco for the next three marketing years beginning July 1, 1980. Section 725.2 is issued pursuant to and in accordance with the Act to determine and announce for the first of those years:

1. The amount of the reserve supply level.
2. The amount of the total supply.
3. The amount of the national marketing quota.
4. The national average yield goal.
5. The national acreage allotment.
6. The national acreage reserve.

A. For establishing acreage allotments for new farms.

B. For making corrections and adjusting inequities in old farms.

7. The national acreage factor.
8. The national yield factor.

Since the 1979-80 marketing year is the last of the three consecutive years for which marketing quotas, previously proclaimed on an acreage-poundage basis, will be in effect § 317(d) of the Act provides that the Secretary shall proclaim marketing quotas for flue-cured tobacco on either an acreage basis or an acreage-poundage basis for the 1980-81, 1981-82, and 1982-83 marketing years, whichever the Secretary determines would result in a more effective quota. It is determined that, in view of the better supply control resulting from the acreage-poundage quota program beginning in 1965, a more effective quota would result from marketing quotas on an acreage-poundage basis.

The determinations by the Secretary contained in § 725.1 and § 725.2 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a notice (44 FR 57932) given in accordance with the provisions of 5 U.S.C. 553.

Discussion of Comments

During the flue-cured comment period, 26 written responses were received. Included were comments from farmers, members of the trade including trade associations, and farm groups. Eleven comments related to the quota with nine respondents advocating no change in the present quota, while two were in favor of a small reduction in the quota. The major thrust of these responses centered around a need for adequate supplies to maintain markets.

Seven comments were received with respect to increasing the national average yield goal. One favored an increase while six opposed an increase.

Nine other respondents gave no specific quota recommendations.

Five meetings were held in the producing area to give farmers and others the opportunity to express their views orally. With respect to the quota, most respondents favored no reduction in the quota, again noting that adequate supplies were needed to maintain markets. At one meeting, most of the attendants generally favored a small increase in the national average yield goal, since cultural practices had improved, which had led to higher yields. However, at the other meetings, most of the attendants generally favored leaving the national average goal unchanged.

In keeping with the Secretary's obligations to maintain adequate supplies to meet demand, a marketing quota 1,095 million pounds, is hereby determined and announced for the 1980-81 marketing year, about the same as last year's.

Section 317(a)(1) of the Act provides, in part, that for flue-cured tobacco, the national marketing quota for a marketing year is the amount of flue-cured tobacco produced in the United States which the Secretary estimates will be utilized during the marketing year in the United States and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The Act further provides that any such downward adjustment shall not exceed 15 per centum of such estimated utilization and exports.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during

the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average domestic consumption during the 10 marketing years preceding the 1979–80 marketing year was 646 million pounds, and the yearly average exports during such period amounted to 539 million pounds. Exports have fluctuated in relatively narrow bands with no predominate trend while domestic use has trended downward. Accordingly, a normal year's exports equals the 10 year average while a normal year's domestic consumption has been set at 585 million pounds. These normals results in a reserve supply level of 2,623 million pounds.

Total supply is defined as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The carryover of flue-cured tobacco in the inventories of manufacturers and dealers (including CCC loan stocks) on July 1, 1979, amounted to 2,075 million pounds, farm sales weight.

The 1979 crop marketings plus 1978 crop tobacco marketed during the 1978–80 marketing year is currently estimated at 977 million pounds. The sum of these, 3,052 million pounds, represents the total supply of flue-cured tobacco for the 1979–80 marketing year, an amount which exceeds the proposed reserve supply level by 429 million pounds.

It is estimated that 555 million pounds of flue-cured tobacco will be utilized in the United States during the 1980–81 marketing year and 540 million pounds will be exported. Because it is deemed desirable to maintain adequate supplies to support the export market without adding to stocks on hand, it's deemed justified to make no adjustment in arriving at the quota. Accordingly, the national marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1980, is determined to be 1,095 million pounds.

The "national average yield goal" has been determined to be 1,854 pounds per acre. It has been determined that this yield will improve or insure the usability of flue-cured tobacco and increase the net return per pound to the growers. In making this determination, consideration was given to research data of the Agricultural Research Service of the Department, one of the land-grant colleges in the flue-cured tobacco areas, and many producer responses.

The community average yields have been determined for flue-cured tobacco and published in the Federal Register, (30 FR 6207, 9875, 14487).

The national acreage allotment is 590,614.89 acres, determined in accordance with provisions of the Act by dividing the national marketing quota by the national average yield goal.

In accordance with the Act, a national reserve, from the national acreage allotment, is established in the amount of 200 acres for making corrections in farm acreage allotments, adjusting inequities and establishing allotments for new farms. It is determined that this reserve acreage will be adequate.

It has been determined that types 11, 12, 13, and 14 constitute one kind of tobacco for the 1980–81, 1981–82, and 1982–83 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco (30 FR 6144). Therefore, no action is being taken under § 313(i) of the Act for the 1980–81 marketing year.

Since farmers are now making their plans for 1980 production of flue-cured tobacco and need to know immediately the acreage allotments and marketing quota for their farms for the 1980–81 marketing year, it is hereby found that compliance with the provisions of Executive Order 12044 and the notice of proposed rulemaking, public participation procedure and 30-day effective date requirements in 5 U.S.C. 553 is impossible and contrary to the public interest. Therefore, this revision is issued without following such procedure.

Final Rule

Part 725 of Title 7 is amended by revising §§ 725.1 and 725.2 and the centerheads which precede them to read as set forth below effective for the 1980 crop of flue-cured tobacco. The material previously appearing in this section under centerhead Determinations and Announcements—1979–80 Marketing year remains in full force and effect as to the crop to which is was applicable.

Proclamation of Quotas

§ 725.1 1980–81, 1981–82, and 1982–83 Marketing years.

Since marketing quotas have been made effective for flue-cured tobacco for the 1977–78, 1978–79, and 1979–80 marketing years (41 FR 52430) and since the 1979–80 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for flue-cured tobacco, and since it is determined that a marketing quota program on an acreage-poundage basis will result in a more effective program for flue-cured tobacco, marketing quotas on an acreage-poundage basis are hereby proclaimed for flue-cured tobacco for the 1980–81, 1981–82, and 1982–83 marketing years.

Determinations and Announcements 1980–81 Marketing Year

§ 725.2 Flue-cured tobacco.

For flue-cured tobacco for the marketing year beginning July 1, 1980:

(a) *Reserve supply level.* The reserve supply level is determined and announced to be 2,623 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 585 million pounds and a normal year's exports of 539 million pounds.

(b) *National marketing quota.* A national marketing quota on an acreage-poundage basis for the marketing year is hereby determined and announced to be 1,095 million pounds. This quota is based on estimated utilization in the United States in such marketing year of 555 million pounds and estimated exports in such marketing year of 540 million pounds, with no adjustment determined to be desirable.

(c) *National average yield goal.* The national average yield goal is determined and announced to be 1,854 pounds. This goal is based on the yield per acre which, on a national average basis, is determined will improve or insure the usability of flue-cured tobacco and increase the net return per pound to growers.

(d) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined and announced to be 590,614.89 acres. This allotment was determined by dividing the national marketing quota of 1,095 million pounds by the national average yield goal of 1,854 pounds.

(e) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms is determined and announced to be 200 acres.

(f) *National acreage factor.* The national acreage factor is determined and announced to be 1.0.

(g) *National yield factor.* The national yield factor is determined and announced to be .9307.

(Secs. 301, 313, 317, 375, 52 Stat. 38, 47, 66, as amended, 79 Stat. 66 (7 U.S.C. 1301, 1313; 1314c, 1375)).

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations". A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement will be prepared and will be available from Robert L. Tarczy, Price Support and Loan Division, room 3741–South Building, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, D.C., on November 23, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-36660 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 228]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period December 2–8, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: December 2. 1979.

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

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

The committee met on November 27, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quanity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved.

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

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

§ 910.528 Lemon Regulation 228.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 2, 1979, through December 8, 1979, is established at 240,000 cartons.

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

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

Dated: November 29, 1979.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Srvice.

[FR Doc. 79-37102 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 966

[Amdt. No. 1]

Tomatoes Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment extends through June 14, 1980, the minimum grade, size, pack, container, marking and inspection requirements effective from October 15 through November 30, 1979, for tomatoes grown in certain counties in Florida. It promotes orderly marketing of such tomatoes and keeps less desirable sizes and qualities from being shipped to consumers.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the October 18, 1979, Federal Register (44 FR 60105) inviting comments by November 20, 1979. None was filed.

This amendment is based upon recommendations made by the committee at its public meeting in Palm Beach, Florida, on September 7, 1979.

The recommendations of the committee reflect its appraisal of the composition of the 1979–80 crop of Florida tomatoes and the marketing prospects for this season. The regulation is similar except for size to those issued during past seasons and to the temporary regulation in effect during October 15 through November 30, 1979. The grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This will provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. During the past two seasons, some problems were encountered in properly sizing varieties that have a tendency towards an oblong shape when grown under unfavorable weather conditions. Last season a $\frac{1}{32}$ inch overlap of sizes was permitted to help alleviate the problem. This season the overlap has been increased to $\frac{2}{32}$ inch in an effort to ensure more accurate sizing. The requirements, including those for containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments may be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards are used to prevent such

tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Since no purpose would be served by regulating tomatoes used for relief, experimental, or charity purposes such shipments are also exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments are exempt.

The following types of tomatoes are exempt from these regulations: elongated types commonly referred to as pear shaped or paste tomatoes, cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes, and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Only tomatoes shipped outside the regulated area are being regulated because of an increase in theU-pick type of harvest in Florida production areas close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption permits persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This reduces the problem of enforcement on small shipments of essentially noncommercial nature. The requirements concerning special pack shipments are intended to help handlers in the production area compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties may be exempted from the size requirements of the regulation.

Findings. After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the amendment to the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of the 1979–80 crop tomatoes grown in the production area have begun and the regulation should become effective on the effective date herein to maximize benefits to producers; (2) information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 15 through November 30, 1979; and (4) compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

This regulation has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant." A Final Impact Analysis is available from Donald S. Kuryloski (202) 447–6393.

7 CFR 966.318 is hereby amended to read as follows:

§ 966.318 Handling regulation.

During the period December 1, 1979, through June 14, 1980, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) of this section or are exempted by paragraphs (b) or (d) of this section.

(a) *Grade, size, container and inpsection requirements.*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least 2$\frac{3}{32}$ inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in Section 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size Classification	Inches	
	Minimum Diameter	Maximum Diameter
7x7	2$\frac{3}{32}$	2$\frac{9}{32}$
6x7	2$\frac{3}{32}$	2$\frac{17}{32}$
6x6	2$\frac{17}{32}$	2$\frac{25}{32}$
5x6	2$\frac{25}{32}$	

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2$\frac{15}{32}$ inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lgr. or 5x6 & Lrg.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or

export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from this regulation. Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1) of this section, (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least 2$^{2}/_{32}$ inches in diameter and (iii) the container weight requirements of paragraph (a)(3) of this section.

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$^{2}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the miniumum specified diameter.

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

Dated November 27, 1979 to become effective December 1, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-37007 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

[FmHA Instruction 1942-A]

Associations; Community Facility Loans; Amendments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Community Facility Loans. The intended effect of this action is to remove reference to the use of Community facility loans for cable TV purposes, add a paragraph to allow the use of land purchase contracts, and to make certain editorial changes.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Louis K. Bangma USDA–FmHA, 14th and Independence Ave. S.W., Washington, D.C. 20250, Room 6310 (telephone (202) 447–7667).

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends Subpart A of Part 1942, Chapter XVII, Title 7 in the Code of Federal Regulations. The Authority to make community facility loans for cable T.V. purposes has been transferred to the Rural Electrification Administration by the Secretary of Agriculture in accordance with the revision of 7 CFR Part 2, delegations of authority by the Secretary of Agriculture and General Officers of the Department, published as a final rule in the Federal Register, vol. 44, No. 103, p. 30313 on Friday 5/25/79. The amendment to the regulations concerning land purchase contracts is meant to clarify existing policy by specifically allowing their use to acquire title to land upon which facilitites are to be constructed or otherwise improved, in accordance with existing regulations. The effect of this change is to allow applicants a greater latitude in eligible methods to be used for land acquisition. No significant changes in eligibility, security, or loan purposes are involved. Other changes are solely editorial in nature.

It is the policy of this Department that rules relating to public property, loan grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C 553 with respect to such rules. These amendments, however, are not published for comment since the effective action of the change regarding cable TV has taken place by final rule of the Secretary of Agriculture. The amendment concerning land purchase contracts only amplifies and clarifies existing policy, and the balance of the changes are only editorial in nature. Therefore, publication for proposed rule making is unnecessary. This determination was made by Kenneth Latcholia (telephone 447–3213).

Accordingly §§ 1942.3, 1942.17(b), 1942.17(c)(1)(i), 1942.17(g)(1)(i), 1942.17(g)(2)(i), 1942.17(j)(4), and 1942.18(l)(1)(iv) of Subpart A of Part 1942 are amended as follows:

§ 1942.3 Preparation of appraisal reports.

1. In § 1942.3, the third sentence, *change* the reference from "(g)(2)(iii)(B)(2)" to "(g)(2)(iii)(B)(*2*)".

* * * * *

§ 1942.17 [Amended]

2. In § 1942.17 paragraph (b) the third sentence, delete "or cable TV", insert "or" before "natural gas."

3. § 1942.17(g)(1)(i) delete "cable TV".

4. In § 1942.17(g)(2)(i) delete "cable TV".

5. In § 1942.17 paragraph (c)(1)(i) is amended, paragraph (j)(4)(i)(B) is deleted and paragraph (j)(4)(iii) is added as set forth below:

§ 1942.17 Appendix A—Community Facilities.

* * * * *

(c) *Priorities.*

(1) * * *

* * * * * *

(i) Loans for facilities providing a utility-type service such as water and sewer system and natural gas distribution systems, may be made to other than public-body-type organizations, when operated on a not-for-profit basis.

* * * * *

(j) *General requirements.*

* * * * *

(4) *Acquisition of land, easements, water rights, and existing facilities.* * * *

(i) *Title for land, easements, water rights, and esisting facilities.*

(A) * * *

(B) [Deleted]

* * * * *

(iii) *Land purchase contract.*

(A) *Definition.* A Land Purchase Contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(*1*) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(*2*) The applicant cannot obtain the land through condemnation.

(*3*) There are no other suitable sites available.

(*4*) National Office concurrence is obtained in accordance with paragraph (D)(*2*) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens, or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other cost needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay FmHA loan. The contract must provide that if the purchaser fails to make payment that FmHA will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then FmHA must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(*1*) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(*2*) The land purchase contract, the Regional Attorney's comments, and the State Director's Recommendations must be submitted to the National Office for concurrence.

(*3*) The land purchase contract must be recorded.

* * * * *

7. In § 1942.18 the title of paragraph (l)(1) and paragraph (l)(1)(iv) are amended as follows:

§ 1942.18 Appendix B—Community facilities planning, bidding, contracting constructing.

(l) *Resident inspection.* * * *

(1) *Inspector's daily diary.*

* * * * *

(iv) Daily entries shall include daily work performed, number of persons and equipment used in the performance of work, and all significant happenings during that day.

* * * * *

(Authorities: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23 delegation of authority by the Assistant Secretary for Rural Development 7 CFR 2.70)

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under this critera. A Final Impact Statement has been prepared and is available from the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6346, Washington, D.C. 20250. Additional Impact Analysis information regarding the transfer of authority for making cable TV loans from Farmers Home Administration to the Rural Electrification Administration available from the Assistant Administrator, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This document has been reviewed in accordance with FmHA Instruction 1901—G "Environmental Impact Statements." It is the determination of the FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1979, P.L. 91–190, an Environmental Impact Statement is not required.

Dated: November 9, 1979.

Gordon Cavanaugh,

Administrator Farmers Home Administration.

[FR Doc. 79-36659 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-07-M

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9 CFR Parts 301, 304, 305, 313, 327, 335, 390, 391

Food Safety and Quality Service

Humane Slaughter Regulations

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The Humane Methods of Slaughter Act of 1978 (Pub. L. 95–445, 92 Stat. 1069) amends the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) to require the adoption of slaughtering and handling practices in accordance with the provisions of the Humane Slaughter Act of 1958 (Pub. L. 85–765). This docket amends the Federal meat inspection regulations to implement Pub. L. 95–445.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold V. Giesemann, Acting Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION: In 1958, in response to intense and broadly based public concerns about cruelty to and abuse of livestock in meatpacking plants, Congress passed the Humane Slaughter Act of 1958 (Pub. L. 85–765, 72 Stat. 862; 7 U.S.C. 1901 *et seq.*). That Act established as the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods. The Act specifically identified several methods of humane slaughtering and handling before slaughter and required the Secretary of Agriculture to designate other humane methods of slaughter and handling prior to slaughter. However, the only authorized method of enforcement provided under the 1958 Act was to require that the humane slaughter and handling policies be adhered to in all plants of any packer desiring to sell meat to the Federal Government.[1] That Act also exempted

[1] Section 3 of the Humane Methods of Slaughter Act of 1958 (Pub. L. 85–765) provided in part: "The public policy declared herein shall be taken into consideration by all agencies of the Federal Government in connection with all procurement and price support programs and operations and after

Footnotes continued on next page

from its provisions, the slaughtering and handling or preparation of livestock for slaughter in connection with a religious ritual. Regulations implementing the 1958 Act were codified at 9 CFR, Subchapter D—"Humane Slaughter of Livestock," Parts 390 and 391.

Although the Humane Slaughter Act had its genesis in concern for the humane treatment of animals, meatpackers soon found an economic incentive to adopt humane methods of slaughter and handling in connection with slaughter. Humane methods proved to be more efficient and less hazardous to plant personnel and such methods also eliminated much of the bruising and other damage to meat which had been the occasion of significant financial loss to the industry. As one meat processor indicated when commenting on the Department's proposed regulations which are being finalized below, "Mistreatment of animals shows up as lost value to the packer. When an animal is bruised in handling, meat inspectors will require bruises to be cut away. When a slaughter animal is subjected to undue stress and excitement, the meat quality is adversely affected."

Thus, in the approximately 20 years since the 1958 law was passed, the vast majority of meat slaughterers in the United States and those in foreign countries who export meat to the United States have adopted humane methods of slaughter and handling. Of the 1,725 federally inspected establishments, only 11 percent (or 190) were considered not in compliance when the new law was adopted. The percentage of plants under State inspection not in compliance was even less. Of the then 2,564 plants operated under the 32 States' meat inspection programs, only 5 percent (or 136) were considered not in compliance. Out of a total of approximately 522 foreign plants slaughtering livestock for export of meat to the United States, only 64 sheep slaughtering plants in Australia were not in compliance. The Department is not aware of any appreciable change in those statistics since the passage of the Act in 1978.

Congress recognized the widespread acceptance of humane methods of slaughter and handling by the meat packing industry, both out of concern for humane treatment of the animals and in the industry's own economic self interest. Additionally, significant constituent interest existed as a result of isolated, but persistent reports of continued abuse of or cruelty to livestock at the few plants which were not in compliance with the policies of the 1958 Act. Thus, Congress adopted the Humane Methods of Slaughter Act of 1978 (Pub. L. 95–445, 92 Stat. 1069).

Effect of the Legislation

The Humane Methods of Slaughter Act of 1978 amended section 3 and 10 of title I of the Federal Meat Inspection Act (21 U.S.C. 603 and 610) to require that all federally inspected slaughtering establishments adopt humane slaughter and handling practices for all cattle, swine, sheep, goats, horses, mules and other equines, in accordance with the provisions of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906). The amendment also affected all State inspected establishments engaged solely in intrastate commerce, since a State must develop and effectively enforce requirements at least equal to those under titles I and IV of the Federal Meat Inspection Act. If a State's program fails to develop and effectively enforce such requirements, the Secretary of Agriculture is required by the Act (21 U.S.C. 661(r)) to designate the State and extend Federal requirements to all operators and transactors wholly within the State. Nondesignated States will therefore be required to implement and effectively enforce their own requirements at least equal to those promulgated below. Section 20(a) of the Federal Meat Inspection Act (21 U.S.C. 620(a)) was also amended to prohibit the importation of any carcass, or part thereof, or any meat or meat food products from livestock not slaughtered and handled in accordance with the humane methods promulgated in the regulations below.

Comments

The Department has been granted only limited discretion in implementing Pub. L. 95–445. Its proposed implementing regulations were made available for public comment in a document published in the Federal Register on June 29, 1979, at 44 FR 27954.

Comments on the proposal were received from 16 individuals and organizations. Private citizens, humane societies, livestock slaughterers, meatpacker associations, a State Agriculture Department, and a foreign embassy were represented in the comments.

Humane Handling Requirements

In general, industry, comments were supportive of the proposal, but some suggested increased specificity in the definition of "humane handling." One commenter suggested that the provisions contained in proposed § 390.2 relating to the condition of livestock pens, driveways, and ramps were too subjective. Another industry commenter objected to the extension of the Federal meat inspector's "police powers" without improved definition of what was humane or inhumane. Some humane society commenters also noted this problem of vagueness indicating that this might lead to uneven enforcement. One such commenter observed that penalties and procedures for violations of the regulations "must be more clearly detailed."

The proposed regulations relating to humane handling practices, now contained in §§ 313.1 and 313.2, have accordingly been modified for purposes of clarity and specificity. In particular, language has been added to make it clear that determinations of violations of these sections are to be made by the inspector. The standards which he/she is to apply have also been clarified. For example, § 313.1(a), as proposed, included the requirement that livestock pens, driveways, and ramps shall be maintained in good repair and be free from sharp or protruding objects. This section has been expanded to further provide that these areas be free from such objects, "which may, in the opinion of the inspector, cause injury or pain to the animals." Similar revisions were made to clarify requirements relating to shelter for the animals (§ 313.1(c)) and driving implements (§§ 313.2 (b) and (c)).

In addition, in § 313.2(a), a requirement was added that specifies that livestock shall not be forced to move faster than a normal walking speed, since movement at a faster speed would lead to excessive excitement and discomfort to the animals. The other changes are minor, non-substantive in nature.

In discharging his responsibilities in administering the Federal Meat Inspection Act, the Secretary recognizes that he has several duties to carry out in the public interest. There is the primary goal to assure that only wholesome and otherwise unadulterated meat and meat food products reach the American public. Other goals include strong enforcement of the laws and regulations without unduly stifling meat production so that consumer prices for meat remain reasonable. These goals are supplemented by the Humane Methods of Slaughter Act to include efforts to assure that animals are humanely slaughtered and handled by

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Footnotes continued from last page
June 30, 1960, no agency or instrumentality of the United States shall contract for or procure any livestock products produced or processed by any slaughterer or processor * * * by any methods other than methods designated and approved by the Secretary of Agriculture * * *."

establishments under the jurisdiction of the Federal Meat Inspection Act.

The Administrator believes that there should be no modification in the authority given to the inplant inspector in the proposed regulations. Our inspection program is designed so that the inspector on the scene has the authority to take appropriate action to protect the public interest. He is supported by an active training program and adequate supervision to assure even and proper enforcement of the Federal Meat Inspection Act and its implementing regulations. To limit his authority to enforce humane slaughter regulations could be perceived by some as a curtailment of authority leading to a possible weakening of his/her ability to act effectively in the public interest.

Jurisdiction for Enforcement

Two commenters stated that the proposed regulations did not contain requirements for farmers, transporters, buyers and sellers. The Department can only exercise enforcement authority in this area as authorized under the Humane Methods of Slaughter Act. In its report No. 95–1059 on the legislation, the U.S. Senate Committee on Agriculture, Nutrition, and Forestry specifically indicated its intent for the scope of the Department's enforcement:

> It is the committee's intent that handling in connection with slaughter be interpreted by the Secretary to begin at the time the livestock come into the custody of the slaughtering establishment, up to and including the moment of slaughter. (Senate Committee Report No. 95–1059, p. 4)

The regulations, therefore, contain criteria for the handling of animals in holding pens; for the treatment of injured animals for minimum discomfort while on the premises of an inspected establishment; and for the construction and repair of pens, driveways, flooring, and fencing. In addition, the Department intends to enforce the Act with regard to any inhumane activity occurring on the premises of an official establishment. On the other hand, the Department cannot intend to enforce requirements which are outside the scope of its statutory authority.

Species Covered by the Act

Several commenters from industry and from humane groups requested further clarification as to which species of animal would be protected. In particular, questions were raised regarding whether the humane handling and slaughtering provisions would apply to chickens, American bison, reindeer, catalo, and beefalo. The Administrator has determined that beefalo are cattle and will be protected under the humane slaughter regulations. The other species are not protected. Both the Federal Meat Inspection Act and the Humane Methods of Slaughter Act specify that the species to be regulated include cattle, sheep, swine, goats, horses, mules, and other equines.

Electric Prods and Cattle Canes

Two humane group commenters requested that electric prods and cattle canes be prohibited in the regulations. The Administrator believes that these driving implements are useful and can be used humanely. Therefore, they are not being prohibited. Electric prods connected to AC house current must be regulated to not more than 50 volts AC. The Administrator did receive support for this requirement describing it as specific, enforceable, and appropriate.

Another commenter stated that livestock handlers may need a means of defense such as a heavy stick or cane. The Administrator does not believe self defense is an issue in this regulation. Handlers should not put themselves in a position where they need to defend themselves from animals. Procedures should be implemented which require livestock to move in the proper direction without undue force. Thus, the regulation specifically prohibits as inhumane treatment the use of any sticks, pipes, clubs, and sharp pointed objects to move or direct livestock.

Availability of Water and Feed in Holding Areas

A suggestion was made that animals have feed and water available as soon as they arrive at the plant. The proposed and final regulations do provide that water is required to be made available in all holding pens and that feed is required to be provided in all holding pens if the animal is retained longer than 24 hours before slaughter.

Sanitary dressing of livestock and prevention of contamination to the meat during slaughter is most easily accomplished if the animal's stomach is nearly empty at the time of slaughter. Animals slaughtered with full stomachs suffer a higher incidence of contamination contributing to the loss of edible meat. The Administrator believes that feeding animals when they arrive at a slaughterer would result in increased condemnation of meat if the animals were to be slaughtered on the day they arrive. Animals which will be held longer than 24 hours should be fed.

Dragging of Crippled or Downer Animals

Two industry commenters objected to the all-inclusive prohibition against dragging of crippled and downer animals. They suggested practical problems depending upon the place where the animal fell and objected to the waste of otherwise wholesome meat if the animal had to be destroyed before moved.

The Administrator recognized that it may not be possible to always get equipment to a spot to move a crippled or downer animal. The regulations provide, however, that no animal may be dragged without first being stunned. Additionally, inspection personnel will encourage the use of equipment dollies or stone boats to move the animal whenever possible to prevent additional injury or discomfort to the animal.

Withdrawal of Inspection

Several industry and humane group commenters discussed the procedures to be followed after a suspected violation of the Act. Industry commenters observed that the practical effect of proposed § 305.5(c) *Withdrawal of inspection; statement of policy.* § 335.30 *Suspension of Assignment of Inspectors,* and § 390.4 *Tagging of equipment, alleyways, pens or compartments to prevent inhumane slaughter or handling in connection with slaughter* will be to force shutdowns of an entire operation, at a cost of thousands of dollars per hour, without the opportunity for a hearing. It is further stated that although the regulations do "contemplate a hearing after the fact," operators would be forced to agree with the initial findings of the Administrator, or remain inoperable for approximately 10 days to 2 weeks. The costs of such delays could mean bankruptcy for the small operator and loss of income to suspended employees whether or not the initial grounds upon which the actions are based were upheld.

The Administrator does not contemplate a withdrawal of inspection from an official establishment without a hearing. However, the Humane Methods of Slaughter Act does authorize the Secretary of Agriculture to suspend inspection temporarily at an official establishment if he finds that any animals have been slaughtered or handled in connection with slaughter inhumanely until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter shall be in accordance with a method prescribed under the Act. Congress has declared it to be our national policy that animals covered by the Act shall be slaughtered and handled in connection with slaughter humanely. Therefore, it would be inappropriate for the Department to allow suspected inhumane activities covered by the Act

to continue until a final determination had been made. The principal purpose of the Act is to deter and prevent inhumane treatment, not to punish for violations. Furthermore, the temporary suspension of inspection for inhumane handling or slaughter would be done in the same manner as the temporary suspension of inspection because of sanitation deficiencies. The use of the "U.S. Rejected" tag would similarly have the same function and meaning as when used on insanitary equipment. It may be removed by the inspector in charge when the cause is corrected or satisfactory assurances are given.

A humane group suggested that some procedure should be included in the regulations to assure that all violations are reported and that the Secretary takes action as appropriate to suspend inspection services. Such reporting requirements will be required by internal instructions and therefore need not be part of the regulations.

Comfort and Shelter

Several commenters suggested that the regulations should provide that the livestock have sufficient room to lie down comfortably and that all holding areas provide shelter from the elements. The Administrator believes there is a distinction between comfort and humane handling. If an animal has enough room to lie down, it is not being inhumanely treated even though it may not have all of the room it would find available in a pasture.

Regarding shelter, healthy livestock (which have been raised on pastures or in feedlots) have less need for shelter than do sick or injured livestock. The regulations do provide for special protection for such livestock depending upon climatic conditions. However, for healthy livestock no specific requirements for shelter are deemed necessary.

Crippled Animals and U.S. Suspects

A suggestion was made that crippled and U.S. suspect animals should be slaughtered immediately. Existing regulations (9 CFR 309.12 and 311.27) already provide for emergency slaughter for humane reasons. In addition, meat packers already have incentives to slaughter U.S. suspects and crippled livestock expeditiously. To delay slaughter may result in further deterioration of the animal's condition which may result in condemnation. For these reasons the Department believes further rulemaking in these areas is unnecessary.

Implementation of the Regulations

One commenter suggested that implementation of the regulations be delayed for 6 months to allow plant management to evaluate humane slaughter procedures and make an informed decision before installing such equipment and training employees. The Humane Methods of Slaughter Act became effective on October 11, 1979, and there is no provision in that Act for any general delay in implementation. The regulations do provide, however, for delays in enforcement, on an individual plant's request showing that implementation will cause an undue hardship. Such delays may not exceed 18 months from the effective date of the Act.

Other Comments

A comment was made that the total elimination of pain during slaughter is impractical and expensive to the public. Although total pain elimination may not be possible it can be minimized by the adoption of proper humane handling and stunning procedures. Such procedures do not have to be expensive or require extensive remodeling. The public interest as expressed by Congress in passing the Act accepts the possibility of some additional expense being imposed upon the public in order to effectuate its goals.

Another comment suggested that inhumane acts of a slaughterer should be reported to the local humane society. Testimony by humane groups on the Humane Methods of Slaughter Act revealed that local humane societies do not have the resources to enforce humane slaughter in all establishments. For this reason, they endorsed the retention of enforcement authority in the Federal Meat and Poultry Inspection Program because the Program already has inspectors in the slaughtering establishments.

One person suggested that only one animal at a time be placed in the knocking pen. Some existing knocking pens were designed to hold two animals standing in a line. If only one animal were allowed in these pens, the animal could move too freely, resulting in inaccurate placement of the stunning device, delayed stunning, and increased excitement for the animal. Livestock should not be excessively crowded in the knocking pen, but they should be restricted in movement to permit effective stunning.

Some commenters raised questions concerning ritual slaughter. The Act specifically exempts certain ritual slaughter and the handling or other preparation of livestock for such ritual slaughter from its requirements. The regulations are therefore similarly inapplicable to such ritual slaughter and handling.

One commenter suggested additional research in stunning methods. While such research may be desirable, it is not a necessary prerequisite to the promulgation of these final regulations.

Additionally, it should be noted that the designation of methods for humane slaughter previously located at 9 CFR Subchapter D, Part 390 have been transferred to new Part 313 as part of the Mandatory Meat Inspection Regulations contained in Subchapter A. Sections 390.5, 390.15, 390.16, and 390.30 have been redesignated as §§ 313.5, 313.15, 313.16, and 313.30. The definitions contained in § 390.1(d) through (j) have been redesignated §§ 301.2 (ooo) to (vvv) respectively.

Also, those new sections implementing Pub. L. 95–445 proposed at §§ 390.2, 390.3, 390.4, and 390.35 have been redesignated §§ 313.1, 313.2, 313.50, and 313.90 respectively.

And, the Definition of the Term *The Act* contained in § 301.2 has been amended to include reference to Pub. L. 95–445.

Accordingly, the following changes are made to the United States Department of Agriculture, Food Safety and Quality Service, meat inspection regulations (Title 9, Code of Federal Regulations, Chapter III).

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 301—DEFINITIONS

1. Part 301, § 301.2(a) (9 CFR 301.2(a)) is amended by inserting a reference to the Humane Methods of Slaughter Act of 1978. Additionally, Part 301, § 301.2 (9 CFR 301.2) is amended by adding at the end thereof new paragraphs (ooo) through (vvv) defining various terms relating to humane slaughter:

§ 301.2 Definitions.

* * * * *

(a) *The Act.* The Federal Meat Inspection Act, as amended, (34 Stat. 1260, as amended, 81 Stat. 584, 84 Stat. 438, 92 Stat. 1069, 21 U.S.C., Sec. 601 *et seq.*).

* * * * *

(ooo) *Inhumane slaughter or handling in connection with slaughter.* Slaughter or handling in connection with slaughter not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906, as amended by the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069) and Part 313 of this subchapter.

(ppp) *Carbon dioxide.* A gaseous form of the chemical formula CO_2.

(qqq) *Carbon dioxide concentration.* Ratio of carbon dioxide gas and atmospheric air.

(rrr) *Exposure time.* The period of time an animal is exposed to an anesthesia-producing carbon dioxide concentration.

(sss) *Anesthesia.* Loss of sensation or feeling.

(ttt) *Surgical anesthesia.* A state of unconsciousness measured in conformity with accepted surgical practices.

(uuu) *Consciousness.* Responsiveness of the brain to the impressions made by the senses.

(vvv) *Captive bolt.* A stunning instrument which when activated drives a bolt out of a barrel for a limited distance.

PART 304—APPLICATION FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

2. Part 304, § 304.2 (9 CFR 304.2) is amended by adding a new paragraph (f) to read as follows:

§ 304.2 Drawings, information to be furnished; grant or refusal of inspection.

* * * * *

(f) Inspection may be refused in accordance with humane slaughter and handling provisions of the Act (21 U.S.C. 603(b)) and the applicable rules of practice.

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION REPORTS OF VIOLATION

3. Part 305, § 305.5 (9 CFR 305.5) is amended by adding a new paragraph (c) to read as follows:

§ 305.5 Withdrawal of inspection; statement of policy.

* * * * *

(c) Inspection service may be temporarily suspended, in whole or in part, at an official establishment, by the Administrator, to the extent that it is determined necessary to prevent inhumane slaughtering or handling in connection with slaughter of livestock as defined in § 301.2(ooo) (9 CFR 301.2(ooo)). The Administrator shall notify the operator of an establishment orally or in writing, as promptly as circumstances permit, of such suspension and the reasons therefor. Such suspension shall remain in effect until the operator of the establishment takes effective steps to prevent a recurrence, or provides other satisfactory assurances that there will not be any recurrences. Upon request, the operator shall be afforded an opportunity for a hearing to show cause why the suspension should be terminated.

4. A new Part 313 is added to specify the following requirements relating to human slaughter and handling of livestock in connection with slaughter and actions to be taken by the inspector when inhumane treatment is observed.

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

Sec.

313.1 Livestock pens, driveways, and ramps.
313.2 Handling of livestock.
313.5 Chemical; carbon dioxide
313.15 Mechanical; captive bolt.
313.16 Mechanical; gunshot.
313.30 Electrical; stunning with electric current.
313.50 Tagging of equipment, alleyways, pens or compartments to prevent inhumane slaughter or handling in connection with slaughter.
313.90 Extension of implementation date.

Authority: 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1901–1906.

§ 313.1 Livestock pens, driveways and ramps.

(a) Livestock pens, driveways and ramps shall be maintained in good repair. They shall be free from sharp or protruding objects which may, in the opinion of the inspector, cause injury or pain to the animals. Loose boards, splintered or broken planking, and unnecessary openings where the head, feet, or legs of an animal may be injured shall be repaired.

(b) Floors of livestock pens, ramps, and driveways shall be constructed and maintained so as to provide good footing for livestock. Slip resistant or waffled floor surfaces, cleated ramps and the use of sand, as appropriate, during winter months are examples of acceptable conctruction and maintenance.

(c) U.S. Suspects (as defined in § 301.2(gg)) and dying, diseased, and disabled livestock (as defined in § 301.2(ccc)) shall be provided with a covered pen sufficient, in the opinion of the inspector, to protect them from the adverse climatic conditions of the locale while awaiting disposition by the inspector.

(d) Livestock pens and driveways shall be so arranged that sharp corners and direction reversal of driven animals are minimized.

§ 313.2 Handling of livestock.

(a) Driving of livestock from the unloading ramps to the holding pens and from the holding pens to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Livestock shall not be forced to move faster than a normal walking speed.

(b) Electric prods, canvas slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury. Any use of such implements which, in the opinion of the inspector, is excessive, is prohibited. Electrical prods attached to AC house current shall be reduced by a transformer to the lowest effective voltage not to exceed 50 volts AC.

(c) Pipes, sharp or pointed objects, and other items which, in the opinion of the inspector, would cause injury or unnecessary pain to the animal shall not be used to drive livestock.

(d) Disabled livestock and other animals unable to move.

(1) Disabled animals and other animals unable to move shall be separated from normal ambulatory animals and placed in the covered pen provided for in § 313.1(c).

(2) The dragging of disabled animals and other animals unable to move, while conscious, is prohibited. Stunned animals may, however, be dragged.

(3) Disabled animals and other animals unable to move may be moved, while conscious, on equipment suitable for such purposes; e.g., stone boats.

(e) Animals shall have access to water in all holding pens and, if held longer than 24 hours, access to feed. There shall be sufficient room in the holding pen for animals held overnight to lie down.

(f) Stunning methods approved in § 313.30 shall be effectively applied to animals prior to their being shackled, hoisted, thrown, cast, or cut.

§ 313.5 Chemical; carbon dioxide.

The slaughtering of sheep, calves and swine with the use of carbon dioxide gas and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Administration of gas, required effect; handling.* (1) The carbon dioxide gas shall be administered in a chamber in accordance with this section so as to produce surgical anesthesia in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be exposed to the carbon dioxide gas in a way that will accomplish the anesthesia quickly and calmly, with a minimum of excitement and discomfort to the animals.

(2) The driving or conveying of the animals to the carbon dioxide chamber shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the anesthesia chamber is essential since the induction, or early phase, of anesthesia is less violent with docile animals. Among other things this requires that, in driving animals to the anesthesia chamber, electrical equipment be used as little as possible and with the lowest effective voltage.

(3) On emergence from the carbon dioxide chamber the animals shall be in a state of surgical anesthesia and shall remain in this condition throughout shackling, sticking and bleeding. Asphyxia or death from any cause shall not be produced in the animals before bleeding.

(b) *Facilities and procedures*—(1) *General requirements for gas chambers and auxiliary equipment; operator.* (i) The carbon dioxide gas shall be administered in a chamber which accomplishes effective exposure of the animal. Two types of chambers involving the same principle are in common use for carbon dioxide anesthesia. They are the "U" type chamber and the "Straight Line" type chamber. Both are based on the principle that carbon dioxide gas has a higher specific gravity than air. The chambers open at both ends for entry and exit of animals and have a depressed central section. Anesthetizing carbon dioxide concentrations are maintained in the central section of the chamber. Effective anesthetization is produced in this section. Animals are driven from holding pens through a pathway constructed of pipe or other smooth metal onto a continuous conveyor device which moves the animals through the chamber. The animals are compartmentalized on the conveyor by impellers synchronized with the conveyor or are otherwise prevented from crowding. While impellers are used to compartmentalize the animal, a mechanically or manually operated gate will be used to move the animal onto the conveyor. Surgically anesthetized animals are moved from the chamber by the same continuous conveyor that carried them into and through the carbon dioxide gas.

(ii) Flow of animals into and through the carbon dioxide chamber is dependent on one operator. The operation or stoppage of the conveyor is entirely dependent upon this operator. It is necessary that he be skilled, attentive, and aware of his responsibility. Overdosages and death of animals can be brought about by carelessness of this individual.

(2) *Special requirements for gas chamber and auxiliary equipment.* The ability of anesthetizing equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments, gas chambers, and all other equipment used must be designed to accommodate properly the species of animals being anesthetized. They shall be free from pain-producing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unnecessary holes, spaces or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or well padded rigid material. Power activated gates designed for constant flow of animals to anesthetizing equipment shall be so fabricated that they will not cause injury. All equipment involved in anesthetizing animals shall be maintained in good repair.

(3) *Gas.* Maintenance of a uniform carbon dioxide concentration and distribution in the anesthesia chamber is a vital aspect of producing surgical anesthesia. This may be assured by reasonably accurate instruments which sample and analyze carbon dioxide gas concentration within the chamber throughout anesthetizing operations. Gas concentration shall be maintained uniform so that the degree of anesthesia in exposed animals will be constant. Carbon dioxide gas supplied to anesthesia chambers may be from controlled reduction of solid carbon dioxide or from a controlled liquid source. In either case the carbon dioxide shall be supplied at a rate sufficient to anesthetize adequately and uniformly the number of animals passing through the chamber. Sampling of gas for analysis shall be made from a representative place or places within the chamber and on a continuing basis. Gas concentrations and exposure time shall be graphically recorded throughout each day's operation. Neither carbon dioxide nor atmospheric air used in the anesthesia chambers shall contain noxious or irritating gases. Each day before equipment is used for anesthetizing animals, proper care shall be taken to mix adequately the gas and air within the chamber. All gas producing and control equipment shall be maintained in good repair and all indicators, instruments, and measuring devices must be available for inspection by Program inspectors during anesthetizing operations and at other times. A suitable exhaust system must be provided to eliminate possible overdosages due to mechanical or other failure of equipment.

§ 313.15 Mechanical; captive bolt.

The slaughtering of sheep, swine, goats, calves, cattle, horses, mules, and other equines by using captive bolt stunners and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Application of stunners, required effect; handling.* (1) The captive bolt stunners shall be applied to the livestock in accordance with this section so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(2) The driving of the animals to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the stunning areas is essential since accurate placement of stunning equipment is difficult on nervous or injured animals. Among other things, this requires that, in driving animals to the stunning areas, electrical equipment be used as little as possible and with the lowest effective voltage.

(3) Immediately after the stunning blow is delivered the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.

(b) *Facilities and procedures*—(1) *General requirements for stunning facilities; operator.* (i) Acceptable captive bolt stunning instruments may be either skull penetrating or nonpenetrating. The latter type is also described as a concussion or mushroom type stunner. Penetrating instruments on detonation deliver bolts of varying diameters and lengths through the skull and into the brain. Unconsciousness is produced immediately by physical brain destruction and a combination of changes in intracranial pressure and acceleration concussion. Nonpenetrating or mushroom stunners on detonation deliver a bolt with a flattened circular head against the external surface of the animal's head over the brain. Diameter of the striking surface of the stunner may vary as conditions require. Unconsciousness is produced immediately by a combination of

acceleration concussion and changes in intracranial pressures. A combination instrument utilizing both penetrating and nonpenetrating principles is acceptable. Energizing of instruments may be accomplished by detonation of measured charges of gunpowder or accurately controlled compressed air. Captive bolts shall be of such size and design that, when properly positioned and activated, immediate unconsciousness is produced.

(ii) To assure uniform unconsciousness with every blow, compressed air devices must be equipped to deliver the necessary constant air pressure and must have accurate, constantly operating air pressure gauges. Gauges must be easily read and conveniently located for use by the stunning operator and the inspector. For purposes of protecting employees, inspectors, and others, it is desirable that any stunning device be equipped with safety features to prevent injuries from accidental discharge. Stunning instruments must be maintained in good repair.

(iii) The stunning area shall be so designed and constructed as to limit the free movements of animals sufficiently to allow the operator to locate the stunning blow with a high degree of accuracy. All chutes, alleys, gates and restraining mechanisms between and including holding pens and stunning areas shall be free from pain-producing features such as exposed bolt ends, loose boards, splintered or broken planking, and protruding sharp metal of any kind. There shall be no unnecessary holes or other openings where feet or legs of animals may be injured. Overhead drop gates shall be suitably covered on the bottom edge to prevent injury on contact with animals. Roughened or cleated cement shall be used as flooring in chutes leading to stunning areas to reduce falls of animals. Chutes, alleys, and stunning areas shall be so designed that they will comfortably accommodate the kinds of animals to be stunned.

(iv) The stunning operation is an exacting procedure and requires a well-trained and experienced operator. He must be able to accurately place the stunning instrument to produce immediate unconsciousness. He must use the correct detonating charge with regard to kind, breed, size, age, and sex of the animal to produce the desired results.

(2) *Special requirements.* Choice of instrument and force required to produce immediate unconsciousness varies, depending on kind, breed, size, age, and sex of the animal. Young swine, lambs, and calves usually require less stunning force than mature animals of the same kind. Bulls, rams, and boars usually require skull penetration to produce immediate unconsciousness. Charges suitable for smaller kinds of livestock such as swine or for young animals are not acceptably interchanged for use on larger kinds or older livestock, respectively.

§ 313.16 Mechanical; gunshot.

The slaughtering of cattle, calves, sheep, swine, goats, horses, mules, and other equines by shooting with firearms and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Utilization of firearms, required effect; handling.* (1) The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animal shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(2) The driving of the animals to the shooting areas shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the shooting area is essential since accurate placement of the bullet is difficult in case of nervous or injured animals. Among other things, this requires that, in driving animals to the shooting areas, electrical equipment be used as little as possible and with the lowest effective voltage.

(3) Immediately after the firearm is discharged and the projectile is delivered, the animal shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.

(b) *Facilities and procedure*—(1) *General requirements for shooting facilities; operator.* (i) On discharge, acceptable firearms dispatch free projectiles or bullets of varying sizes and diameters through the skull and into the brain. Unconsciousness is produced immediately by a combination of physical brain destruction and changes in intracranial pressure. Caliber of firearms shall be such that when properly aimed and discharged, the projectile produces immediate unconsciousness.

(ii) To assure uniform unconsciousness of the animal with every discharge where small-bore firearms are employed, it is necessary to use one of the following type projectiles: Hollow pointed bullets; frangible iron plastic composition bullets; or powdered iron missiles. When powdered iron missiles are used, the firearms shall be in close proximity with the skull of the animal when fired. Firearms must be maintained in good repair. For purposes of protecting employees, inspectors and others, it is desirable that all firearms be equipped with safety devices to prevent injuries from accidental discharge. Aiming and discharging of firearms should be directed away from operating areas.

(iii) The provisions contained in § 313.15(b)(1)(iii) with respect to the stunning area also apply to the shooting area.

(iv) The shooting operation is an exacting procedure and requires a well-trained and experienced operator. He must be able to accurately direct the projectile to produce immediate unconsciousness. He must use the correct caliber firearm, powder charge and type of ammunition to produce the desired results.

(2) *Special requirements.* Choice of firearms and ammunition with respect to caliber and choice of powder charge required to produce immediate unconsciousness of the animal may vary depending on age and sex of the animal. In the case of bulls, rams, and boars, small bore firearms may be used provided they are able to produce immediate unconsciousness of the animals. Small bore firearms are usually effective for stunning other cattle, sheep, swine, and goats, and calves, horses, and mules.

§ 313.30 Electrical; stunning with electric current.

The slaughtering of swine, sheep, calves, cattle, and goats with the use of electric current and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Administration of electric current, required effect; handling.* (1) The electric current shall be administered so as to produce surgical anesthesia in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be exposed to the electric current in a way that will accomplish the anesthesia quickly and calmly, with a minimum of excitement and discomfort to the animals.

(2) The driving or conveying of the animals to the place of application of electric current shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals

to the place of application is essential to insure rapid and effective insensibility. Among other things, this requires that, in driving animals to the place of application, electrical equipment be used as little as possible and with the lowest effective voltage.

(3) The quality and location of the electrical shock shall be such as to produce immediate insensibility to pain in the exposed animal.

(4) The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking and bleeding. However, the animal shall die from loss of blood resulting from the sticking and bleeding, and not from the electrical shock.

(b) *Facilities and procedures; operator*—(1) *General requirements for operator.* It is necessary that the operator of electric current application equipment be skilled, attentive, and aware of his responsibility. Overdosages and death of animals can be brought about by carelessness of this individual.

(2) *Special requirements for electric current application equipment.* The ability of electric current equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments, current applicators, and all other equipment used must be designed to accommodate properly the species of animals being anesthetized. They shall be free from pain-producing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unnecessary holes, spaces or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or padded material. Power activated gates designed for constant flow of animals to electrical stunning equipment shall be so fabricated that they will not cause injury. All electrical stunning and auxiliary control and other equipment shall be maintained in good repair and all indicators, instruments, and measuring devices shall be available for inspection by Program inspectors during stunning operations and at other times.

(3) *Electric current.* Each animal shall be given a sufficient application of electric current to insure unconsciousness immediately and through the bleeding operation. Suitable timing, voltage and current control devices shall be used to insure that each animal receives the necessary electrical charge to produce immediate unconsciousness. Moreover, the current shall be applied so as to avoid the production of hemorrhages or other tissue changes that would interfere with the inspection procedures of the Meat and Poultry Inspection Program.

§ 313.50 Tagging of equipment, alleyways, pens, or compartments to prevent inhumane slaughter or handling in connection with slaughter.

When an inspector observes an incident of inhumane slaughter or handling in connection with slaughter, he/she shall inform the establishment operator of the incident and request that the operator take the necessary steps to prevent a recurrence. If the establishment operator fails to take such action or fails to promptly provide the inspector with satisfactory assurances that such action will be taken, the inspector shall follow the procedures specified in paragraph (a), (b), or (c) of this section, as appropriate.

(a) If the cause of inhumane treatment is the result of facility deficiencies, disrepair, or equipment breakdown, the inspector shall attach a "U.S. Rejected" tag thereto. No equipment, alleyway, pen or compartment so tagged shall be used until made acceptable to the inspector. The tag shall not be removed by anyone other than an inspector. All livestock slaughtered prior to such tagging may be dressed, processed, or prepared under inspection.

(b) If the cause of inhumane treatment is the result of establishment employee actions in the handling or moving of livestock, the inspector shall attach a "U.S. Rejected" tag to the alleyways leading to the stunning area. After the tagging of the alleyway, no more livestock shall be moved to the stunning area until the inspector receives satisfactory assurances from the establishment operator that there will not be a recurrence. The tag shall not be removed by anyone other than an inspector. All livestock slaughtered prior to the tagging may be dressed, processed, or prepared under inspection.

(c) If the cause of inhumane treatment is the result of improper stunning, the inspector shall attach a "U.S. Rejected" tag to the stunning area. Stunning procedures shall not be resumed until the inspector receives satisfactory assurances from the establishment operator that there will not be a recurrence. The tag shall not be removed by anyone other than an inspector. All livestock slaughtered prior to such tagging may be dressed, processed, or prepared under inspection.

§ 313.90 Extension of implementation date.

(a) A delay in the application of the humane slaughtering and handling provisions of the Act may be obtained. The authorized period of time for the delay of implementation shall in no event extend beyond April 11, 1981.

(b) Any person, firm, or corporation may request a delay in the application of the humane slaughtering and handling provisions of the Act to its operations. Requests shall be submitted in letter form to the regional director of the geographical region in which the requesting party's operations are located. Requests shall specify the reasons why a delay in the application of the humane slaughtering and handling provisions of the Act is necessary to avoid undue hardship and shall include an anticipated date by which full compliance can be accomplished.

(c) In evaluating a request for delay in the application of the humane slaughtering and handling provisions of the Act, the appropriate regional director will consider whether or not the requesting party will sustain undue hardship if made to comply after October 10, 1979. In deciding whether undue hardship would occur in a particular case, the regional director will consider, among other things, the extent of the facility and/or equipment changes required for the requesting party to achieve compliance and the unavoidable difficulties attendant with such changes, such as unavailability of construction materials, weather problems, and strikes.

PART 327—IMPORTED PRODUCTS

5. Part 327, § 327.2(a)(ii)(*a*) (9 CFR 327.2(a)(2)(ii)(*a*)) is amended by requiring inspection of the methods of slaughtering and handling in connection with slaughtering as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(a) * * *

(2) * * *

(ii) * * *

(*a*) Ante-mortem inspection of animals for slaughter and inspection of methods of slaughtering and handling in connection with slaughtering which shall be performed by veterinarians or by other employees or licensees of the system under the direct supervision of the veterinarians;

* * * * *

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

6. Part 335, § 335.1 (9 CFR 335.1) is amended by adding a new paragraph (c) to read as follows:

§ 335.1 Scope and applicability of rules of practice.

* * * * *

(c) The rules of practice set forth in Subpart D of this Part shall be applicable to the suspension of assignment of inspectors under section 3(b) of the Act (21 U.S.C. 603(b)). In addition, the definitions applicable to proceedings under the Uniform Rules of Practice (7 CFR 1.132) shall apply with equal force and effect to proceedings under Part 313.

7. Part 335 is also amended by adding a new Subpart D and the Table of Contents is amended accordingly, to read as follows:

Subpart D—Rules Applicable to Suspension of Assignment of Inspectors Under Section 3(b) of the Federal Meat Inspection Act

Sec.

335.30 Suspension of the assignment of inspectors under section 3(b) of the Act.
335.31 Written notification to operator of establishment of incident.
335.32 Procedure upon receipt of the establishment answer.

Authority.—Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 92 Stat. 1069, 42 FR 35625, 35626, 35631.

Subpart D—Rules Applicable to Suspension of Assignement of Inspectors Under Section 3(b) of the Federal Meat Inspection Act

§ 335.30 Suspension of the assignment of inspectors under section 3(b) of the Act.

In any situation in which the Administrator has determined that livestock have been inhumanely slaughtered or handled in connection with slaughter at an official establishment, the Administrator may suspend the assignment of inspectors at that establishment, in whole or in part, as the Administrator determines necessary to prevent inhumane treatment of livestock. The Administrator shall notify the operator of an establishment orally or in writing, of such suspension as soon as possible. In the event of oral notification, a written confirmation shall be given as promptly as circumstances permit to the operator of the establishment. The written notification or confirmation shall be served upon the operator of the establishment in a manner prescribed in § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)).

§ 335.31 Written notification to operator of establishment of incident.

The written notification or confirmation, specified in § 335.30, shall constitute the complaint in the proceeding and shall briefly set forth the reason for the suspension of the assignment of inspectors, including allegations of fact which constitute a basis for the action. The complaint shall offer the establishment the opportunity to request a hearing with respect to the merits or validity of the suspension action and shall give the establishment the opportunity to furnish written assurances satisfactory to the Secretary that all inhumane slaughtering and handling in connection with slaughter have stopped and will not recur. The complaint shall state the time within which the respondent's answer must be made, which shall not be less than 10 days after service of the complaint.

§ 335.32 Procedure upon receipt of the establishment answer.

If any establishment notified in accordance with § 335.31:

(a) Returns an answer and requests a hearing, the complaint, answer, and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for the proceeding; or

(b) Returns written assurances which the Secretary determines to be unsatisfactory, the establishment shall promptly be informed of this determination in a written notification. Said notification shall briefly set forth the reason the assurances were deemed unacceptable and shall offer the establishment the right to file an answer to the original complaint and to request a hearing with respect to the merits or validity of the suspension action. If any establishment so notified files an answer to the original complaint and requests a hearing, a copy of the complaint, answer, and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for the proceeding.

(c) Returns written assurances which the Secretary determines to be satisfactory, the suspension shall be terminated and the establishment informed of this action as soon as possible.

SUBCHAPTER D—HUMANE SLAUGHTER OF LIVESTOCK

PART 390 [REVOKED]

PART 391 [REVOKED]

8. Subchapter D of 9 CFR, Chapter III is hereby revoked in its entirety.

(Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 92 Stat. 1069, 42 FR 35625, 35626, 35631)

This final rule must become effective immediately upon publication in the Federal Register in order to comply with the Humane Methods of Slaughter Act of 1978 (Pub. L. 95-445; 92 Stat. 1069). Furthermore, it does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, it is found upon good cause, under the administrative procedure provisions in 5 U.S.C. 553, that further notice and other procedure with respect to these changes are unnecessary and good cause is found for making the amendments effective.

Further, this final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An approved Final Impact Statement is available from Dr. Arnold V. Giesemann, Acting Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, on November 26, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 79-36848 Filed 11-29-79; 8:45 am]
BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Nuclear Regulatory Commission is correcting an error in its notice of change of telephone numbers for Regions III and V published in the Federal Register on November 5, 1979 (44 FR 63515).

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301–492–7086.

SUPPLEMENTARY INFORMATION: In the NRC notice of November 5, 1979, (44 FR 63515) the heading for Part 73, "Physical Protection of Plants and Animals" should be corrected to read "Physical Protection of Plants and Materials".

Dated at Bethesda, Maryland, this 23rd day of November 1979.

For the Nuclear Regulatory Commission.

John C. Carr,

Acting Director, Division of Rules and Records, Office of Administration.

[FR Doc. 79-36845 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 305

Supplementary Grant Rates for Public Works Projects

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This amendment revises the method of determining rates applicable to EDA grants which supplement public works grants of other Federal agencies. EDA's supplementary grant rate regulation establishes a methodology, based on statutory factors, for determining maximum grant rates for different types of projects. As amended, this regulation allows EDA to consider the special nature of jointly funded projects in determining the appropriate grant rates for such projects. The intended effect of this amendment is to improve EDA's ability to participate with other Federal agencies in funding public works projects, thereby improving the provision of Federal assistance to recipients.

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, DC 20230.

FOR FURTHER INFORMATION ON THIS AMENDMENT CONTACT: James F. Marten, U.S. Department of Commerce, Room 7009, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: Under section 101(a)(2) of the Public Works and Economic Development Act of 1965 (PWEDA), as amended (42 U.S.C. 3131), EDA is authorized to make supplementary grants both for projects which receive EDA direct public works grants and for projects which receive assistance under grant-in-aid programs of other Federal agencies. Section 101(c) of PWEDA limits the total Federal share of the funding for any project so assisted to 80 percent of the project's costs. Section 101(c) also establishes factors to be considered in determining a particular project's grant rate within that 80 percent maximum. EDA has implemented the considerations described in section 101(c) by establishing a supplementary grant rate schedule in its public works grants regulations at 13 CFR 305.5. This regulation contains a single method of determining supplementary grant rates both for projects for which EDA provides the direct grant and for projects for which direct funding is provided by another Federal agency. 13 CFR 305.5(b)(1) describes factors relating to the nature of a project which may affect the grant rate for which such project is eligible. Subsection (b)(3) lists a series of maximum grant rates, within the statutory maximum for Federal participation, which limit the amount of assistance a project can receive under title I of PWEDA. These maximums reflect considerations required by section 101(c) of PWEDA for the determination of grant rates.

As amended, §305.5(b)(1) recognizes that jointly funded projects are characterized by special features which should be considered in determining their grant rates. An evaluation of these factors would allow EDA to supplement the other Federal agency's funding of a project to up to 80 percent of the project's allowable costs. However, EDA's participation in such projects may not exceed the area grant rate restrictions of subsection (b)(3).

Certain other changes have been made to subsections (a) and (b) of § 305.5 for reasons of clarity. Subsection (a) has been rewritten to clarify the scope of applicability of the regulation. Subsection (b)(1) has been revised to eliminate verbiage; and subsection (b)(3) has been reworded to clarify the type of funds to which the area grant rate maximums apply.

This final rule is identical to the interim rule published in the Federal Register on July 26, 1979 (44 FR 43712), except that § 305.5(a) has been revised to correct a reference. As published in the interim rule, § 305.5(a) provided that EDA may make supplementary grants to enable eligible applicants to take maximum advantage of "EDA direct grants under § 305.4 * * *". EDA intended to refer to direct grants under § 305.3 (regarding grants for regular public works projects) as well as § 305.4 (regarding grants under the Public Works Impact Program). As published, the interim rule omitted the reference to § 305.3 which had been in the previous version of § 305.5(a).

This amendment will have no effect on the overwhelming majority of projects assisted by EDA. Rather, the rule merely allows EDA to consider certain additional factors in establishing the grant rate for projects which EDA is jointly funding with other Federal agencies.

In accordance with the criteria of Department of Commerce Administrative Order 218-7, EDA has determined that this amendment is not a significant regulation subject to the requirements of Executive Order 12044 regarding the publication of significant regulations. However, in the spirit of the executive order, EDA published this rule in interim form and allowed 60 days for comment. EDA did not receive any substantive comments concerning the interim rule.

Accordingly, EDA amends 13 CFR 305.5 by revising paragraphs (a) and (b) introductory text, by adding paragraph (b)(1)(iv) and by revising paragraph (b)(3) introductory text to read as follows:

§ 305.5 Supplementary grant rates.

(a) Subject to the limitation on the maximum Federal share of project financing set forth in this section, EDA may make supplementary grants to enable eligible applicants under § 305.2 to take maximum advantage of EDA direct grants under § 305.3 and § 305.4 and to enable such applicants to take maximum advantage of such existing or future Federal grant-in-aid programs that in the opinion of the Assistant Secretary further the purposes of the Act.

(b) In determining the amount of supplementary grant assistance, the Assistant Secretary will take into consideration the following factors:

(1) * * *

(iv) In the case of projects for which EDA supplements direct grants of other Federal agencies, the total Federal funding may be up to 80 percent of the project's costs (except as allowed by paragraph (b)(3) (i), (ii) or (iii)) in consideration of the following characteristics of such projects:

(A) The special Federal attention focused on such projects;

(B) The concentrated Federal efforts to assist the communities where such projects are located;

(C) The several program goals which such projects will carry out;

(D) The several Congressional mandates which such projects are required to meet; and

(E) The efficient delivery of Federal assistance through coordinated projects which avoid separate Federal grants and minimize administrative duplication.

* * * * *

(3) The maximum grant rate of funds granted under the authority of title I of the Act for projects in designated areas, determined by relative needs, is as follows:

* * * * *

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

Dated: November 20, 1979.

H. W. Williams,

Acting Assistant Secretary for Economic Development.

[FR Doc. 79-36873 Filed 11-29-79; 8:45 am]

BILLING CODE 3510-24-M

CIVIL AERONAUTICS BOARD

14 CFR Part 398

[Policy Statement 89; Amdt. No. 1 to Part 398; Docket 34650]

Guidelines for Individual Determinations of Essential Air Transportation

Correction

In FR Doc. 79-35091 appearing on page 65584 in the issue of Wednesday, November 14, 1979, the Policy Statement Number in the heading should have been "Policy Statement 89; . . .".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

Correction

In FR Doc 79-35566 appearing on page 66466 in the issue for Monday, November 19, 1979, on page 66477, third column, paragraph (e)(3) of § 305.4, second line, insert "May 19, 1980" after "to".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM79-74; Order No. 60]

Interstate Pipeline Transportation on Behalf of Other Interstate Pipelines

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (FERC) adopts a blanket certificate procedure to permit interstate pipelines to transport natural gas for delivery to other interstate pipelines. Any interstate pipeline which holds a blanket certificate could transport natural gas under the terms applicable to transportation authorized under section 311(a)(1) of the Natural Gas Policy Act of 1978 without prior FERC approval of each individual transaction.

EFFECTIVE DATE: November 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Platt, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8454.

Robert J. Cupina, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-9031.

November 21, 1979.

I. Background

The Commission issued a proposed rule on August 27, 1979, which provides for blanket certificates to authorize transportation by interstate pipelines on behalf of other interstate pipelines.[1] After conducting a public hearing on September 24, 1979, and analyzing comments received on the proposal the Commission is promulgating a final rule to implement this proposal.

Section 311(a)(1) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3371(a)(1), enables the Commission to authorize transportation by an interstate pipeline on behalf of any intrastate pipeline or local distribution company. However, transportation by an interstate pipeline on behalf of a second interstate pipeline is beyond the scope of section 311 of the NGPA. Such transportation arrangements require certificates of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act.

This gap in the Commission's section 311 authority may place a greater regulatory burden on an interstate pipeline transporting natural gas for other interstate pipelines than would be required if the interstate pipeline were transporting on behalf of an intrastate pipeline or a local distribution company. Unlike section 311 authorizations which can be implemented on a self-executing basis (See 18 CFR 284.102), certificates under section 7(c) of the Natural Gas Act are issued only after a case-by-case review. Hence, under section 311 an intrastate pipeline or local distribution company seeking to attach new supplies through interstate pipeline transportation may implement such a transaction for a two year period without prior Commission approval. However, if an interstate pipeline sought the same supply for its customers, the transaction would require the Commission to issue at least a temporary certificate before a second interstate pipeline could transport the natural gas to the purchasing interstate pipeline. In view of the Commission's desire to increase system supplies available to interstate pipelines as well as to reduce the regulatory burden on the interstate pipelines transporting those supplies, the Commission has determined that case-by-case review of each such tranportation arrangement is inconsistent with the public interest at this time.

In place of individual applications for each transportation arrangement, the final rule would allow the transporting interstate pipeline to apply for a one time blanket certificate which would authorize all transportation services on behalf of other interstate pipelines for periods of up to two years. Although such transportation would remain subject to the Commission's Natural Gas Act jurisdiction, the terms and conditions attached to the certificate (except for the application procedure in § 284.107) would be identical to those imposed by Subpart B of Part 284.

II. Public Convenience and Necessity

The Commission finds that the transportation authorized by these blanket certificates is required by the present or future public convenience and necessity.[2]

[1] 44 Fed. Reg. 51612 (September 4, 1979).

[2] Similar blanket transportation certificates have been issued in the past. High Island Offsore System and U-T offshore System, Docket Nos. CP75-104 and CP76-118, Order issued June 12, 1978.

Several factors underlie this finding. First, the natural gas will enter the general system supplies of an interstate pipeline, rather than benefiting specific end-users. Second, the natural gas will be subject to end-use allocation under Commission approved curtailment plans. Third, individual transactions under the blanket certificate are short-term (two years or less) and would not disrupt markets upon which interstate pipelines have traditionally relied.

III. Summary of Comments

Fifteen comments were filed in response to the proposed rule. The written comments and presentations at the public hearing focused upon the treatment of transportation revenues, the scope of the blanket certificate authorization, and clarification of other certificate conditions.

A. *Crediting of Revenues.* Paragraph (d) incorporates the treatment of revenues specified in § 284.103(d), which governs transportation by interstate pipelines authorized by section 311(a)(1) of the NGPA. Section 284.103(d) provides a one cent per MMBtu allowance for out-of-pocket costs. If the revenues subject to § 284.103(d) fall within representative levels which have been credited in arriving at a test period cost of service or if the volumes transported fall within those representative levels used in establishing the pipeline's current rates, the pipeline retains the revenues from the transportation. However, if the pipeline receives revenues in excess of those provided in determining the pipeline's rates, then § 284.103(d) requires the revenues in excess of out-of-pocket costs to be credited to the pipeline's customers through Account 191. Several comments suggested increasing the one cent out-of-pocket cost allowance to five cents, and another comment suggested allowing the pipeline to retain 50 percent of all transportation revenues as an "incentive." The final rule does not incorporate either suggestion. A pipeline is permitted to recover demonstrated out-of-pocket costs in excess of one cent per MMBtu under § 284.103(d)(3). Any revenues retained by the pipeline which are not a reimbursement of out-of-pocket costs represent a double recovery of costs by the pipeline from both its regular ratepayers and those served under the blanket certificate.

One comment suggested that the pipeline's out-of-pocket costs be debited to Account 191. Because only revenues in excess of out-of-pocket costs (as represented by the one cent allowance or a demonstrated greater amount) are credited to Account 191, a further debiting of Account 191 would represent a double recovery of costs by the pipeline. Accordingly, the Commission rejects the suggestion.

One comment questioned the effect of a general rate settlement upon the requirements of § 284.103. An applicant for a blanket certificate may call to the Commission's attention any provision of a previous settlement which may conflict with the requirements of § 284.103(d). However, unless otherwise provided in the order granting the blanket certificate, the provisions of § 284.103(d) will apply to all transactions covered by the certificate.

B. Scope of the Blanket Certificate

Several comments questioned the limitation that the transportation by an interstate pipeline must be "on behalf of any other interstate pipeline." In general, the Commission's interpretation of the phrase "on behalf of" in the context of section 311 of the NGPA is equally applicable to determining the scope of any blanket certificate issued under the final rule.[3] This requirement excludes the transportation of the pipeline's own system supplies through the pipeline's own facilities for two reasons. First, such transportation is authorized by the pipeline's existing certificates covering the transportation and sales for resale of its system supplies. Second, the certification of new loads to be served from the system supplies of an interstate pipeline is central to the Commission's responsibilities under the Natural Gas Act and should not be authorized on a self-implementing basis. For this reason the transportation of the pipeline's own volumes will continue to be excluded. Although transportation of natural gas owned by a pipeline through the pipeline's own facilities is not covered, any transportation by an interstate pipeline of a second interstate pipeline's system supplies is within the scope of the blanket certificate. Such transportation would be eligible even if other intermediaries transport the natural gas before reaching the second pipeline's facilities.

A comment sought clarification of whether the blanket certificate would be limited to the transportation of newly acquired natural gas supplies. The final rule permits either new or existing supplies to be transported under the blanket certificate.

Another comment sought explicit inclusion of offshore pipelines within the scope of the blanket certificate. As promulgated, the rule applies equally to both onshore and offshore pipelines.

A comment sought to reduce the scope of the blanket certificate. The comment recommended imposing a two year limit on the duration of the initial blanket certificate (as opposed to individual transactions). Renewals of the blanket certificate would be granted only if the holder of a blanket certificate demonstrated "good faith continuing efforts to reduce curtailments and increase system supplies." The comment claims that this renewal procedure would provide an incentive for the certificate holder to reduce curtailments to its customers. However, the Commission notes that most interstate pipelines are already under such a service obligation under their outstanding certificates. Given the general improvement in the curtailment levels of most interstate pipelines, such a limitation is not necessary.

C. Construction of Facilities

A number of comments suggested expanding the budget-type certificate for the construction of gas purchase facilities to include transactions authorized by a blanket certificate. The Commission's final rule issued on November 1, 1979 in Docket Nos. RM79-37 and RM79-43 addresses these concerns. Facilities incidental to a transaction authorized by a blanket certificate meet the definition of "gas supply facilities" in § 157.7(b)(4) of this chapter and may be construed without an individual certificate under section 7(c) of the Natural Gas Act. The final rule contains a reference to this provision.

IV. Section by Section Analysis of the Final Rule

Paragraph (a) of § 284.221 clarifies the relationship between the blanket certificate and the self-executing authorizations in Subpart B of part 284; *i.e.* the blanket certificate covers only natural gas transported by interstate pipelines for the system supplies of other interstate pipelines. The transportation of the interstate pipeline's own natural gas is not covered by the blanket certificate. Under paragraph (d), long term transportation arrangements are also excluded from the blanket certificate. However, the blanket certificate may be used to commence a long term transaction while an application for a permanent certificate of public convenience and necessity is pending.

Paragraph (b) indicates the limited nature of the blanket certificate. Although the certificate is of indefinite duration, individual transactions

[3] No. See Order No. 46, issued August 30, 1979, 44 FR 52179 (September 7, 1979) at n.8.

authorized under it are limited to two years in accordance with § 284.105. An interstate pipeline may file for a blanket certificate even if the pipeline has not arranged for any specific transactions at the time of the application.

Paragraph (c) prescribes an abbreviated application procedure. Because data on individual transactions will be filed within thirty days of the commencement of each transaction in accordance with § 284.106, detailed data is not required for the blanket certificate application. In addition, the filing of a summary report will also be required under § 284.4, with 48 hours of the commencement of each transaction covered by the blanket certificate.

Paragraph (d) incorporates by reference the conditions set forth in Subpart B of Part 284 as amended from time to time. Although all provisions of Subpart B are incorporated, only those relating to self-implementing transactions for periods of up to two years are relevant. Hence, the application procedure of § 284.107 is not applicable. A clarifying and conforming change has been made in § 284.107.

Paragraph (e) frees the holder of the blanket certificate from any continuing service obligation after each underlying transportation contract expires. The Commission intends to grant abandonment authority at the same time that its grants a blanket certificate as part of its policy of placing the holder of a blanket certificate in an equivalent position to a transporter authorized under section 311(a)(1) of the NGPA.

Paragraph (f) makes clear that interstate pipelines may still obtain section 7(c) authorization on a case-by-case basis for specific transportation arrangements which would otherwise be authorized by the blanket certificate, regardless of whether or not the interstate pipeline holds a blanket certificate.

Paragraph (g) includes a cross-reference for the Commission's budget-type certificate procedures to authorizing the construction of gas purchase facilities. If a transaction requires the construction of facilities which are subject to the Commission's Natural Gas Act jurisdiction, the holder of a blanket certificate must also hold a budget-type certificate issued pursuant to § 157.7(b) in order that the transaction may commence without prior Commission approval.

V. Effective Date

Because of the need to encourage the attachment of new supplies to the interstate natural gas market and time constraints imposed by the onset of the winter heating season, the Commission finds that good cause exists to make this rule effective immediately. 5 U.S.C. 553(d)(3).

(Natural Gas Act, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009, 42 FR 46267).

In consideration of the foregoing, the Commission is adding a new Subpart G to Part 284, Subchapter I, Chapter I of Title 18, Code Federal Regulations, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The table of sections for Part 284 is amended by the addition of a new Subpart G to read as follows:

Subpart G—Blanket Certificates Authorizing Transactions In Accordance With Subparts P Through D

Sec.

284.221 Transportation on behalf of interstate pipelines.

Authority: Natural Gas Act, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; E.O. 12009, 42 FR 46267.

§ 284.4 [Amended]

2. Part 284 is amended in § 284.4(a) by deleting the word "subchapter" and inserting in lieu thereof the word "part."

§ 284.107 [Amended]

3. Part 284 is amended in § 284.107(a) by deleting the phrase "not authorized under § 284.102(a)" and inserting in lieu thereof the phrase "pursuant to section 311(a)(1) of the NGPA, which is excluded from authorization under § 284.102(b)(1),".

4. Part 284 is further amended in the text of the regulations by the addition of a new Subpart G to read as follows:

Subpart G—Blanket Certificates Authorizing Transactions In Accordance With Subparts B Through D

§ 284.221 Transportation on behalf of interstate pipelines.

(a) *Applicability.* This section applies to the transportation of natural gas by an interstate pipeline on behalf of any other interstate pipeline. Transportation of natural gas on behalf of an intrastate pipeline or a local distribution company shall be subject to the provisions of Subparts B, C and F of this part.

(b) *Blanket certificate.* Any interstate pipeline may apply for a blanket certificate under this section. Upon application therefor, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 of this chapter and, if required by the public convenience and necessity, will issue to an interstate pipeline to which this section is applicable, a blanket certificate authorizing such pipeline company to transport natural gas for the system supply of any other interstate pipeline, to the same extent and in the same manner as transportation on behalf of intrastate pipelines is authorized by Subpart B of this part.

(c) *Application procedure.* Applications for blanket certificates shall state:

(1) The name of the applicant, and

(2) A statement that the applicant will comply with the conditions in paragraph (d) of this section.

(d) *General conditions.* Any blanket certificate under this section shall be issued subject to the following conditions:

(1) Any transaction authorized under a blanket certificate shall be subject to the same terms and conditions, rates and changes, and reporting requirements that would apply if the transaction were authorized by Subpart B of this part (as such subpart may be amended from time to time), except for the requirements of § 284.107.

(2) Any filings made with the Commission reporting individual transactions shall reference the docket number of the proceeding in which the blanket certificate was granted.

(e) *Pregrant of abandonment.* Abandonment of transportation services pursuant to section 7(b) of the Natural Gas Act is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a blanket certificate under this section.

(f) *Availability of regular certificates.* Nothing in this subpart shall preclude an interstate pipeline with regard to a particular transportation service provided to any other interstate pipeline from obtaining an individual certificate of public convenience and necessity for that service or from proceeding under section 311(a)(1) of the NGPA regarding that service, if applicable.

(g) *Cross-reference.* For budget-type certificate authority to construct jurisdictional facilities incidental to transactions under this section, see § 157.7(b) of this chapter.

[FR Doc. 79-36818 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 178

[Docket No. 75F-0323]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

Correction

In FR Doc. 79-31667, appearing in the issue of Tuesday, October 16, 1979, at page 59506, in the third column, the first paragraph, the third line, correct "Octadecyl 3,5-di *tert*-butyl-4-hydroxyhydrocinnamate" by inserting a hyphen between the "i" and the "*t*" in the word "di-*tert*".

BILLING CODE 1505-01-M

21 CFR Part 701

[Docket No. 75N-0110]

Cosmetic Labeling; Designation of Ingredients; Revocation of Partial Stay and Confirmation of Effective Date.

AGENCY: Food and Drug Administration.

ACTION: Revocation of Partial Stay and Confirmation of Effective Date

SUMMARY: This document revokes the partial stay of the cosmetic ingredient labeling regulations permitting ingredients, other than color additives, present at a concentration of less than 1 percent to be listed without respect to order of predominance. Objections to this provision and requests for hearing were withdrawn by the objectors.

EFFECTIVE DATE: This revocation of the stay is effective on November 29, 1979.

FOR FURTHER INFORMATION CONTACT: Heinz J. Eiermann, Bureau of Foods (HFF-440), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-245-1530.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 17, 1973 (38 FR 28912), the Food and Drug Administration (FDA) issued final regulations requiring the declaration of ingredients on cosmetic labels. On March 3, 1975 (40 FR 8918), the regulations were amended by adding paragraphs (f) through (q) to 21 CFR 701.3 to provide alternative methods for declaration of ingredients. A period of 30 days was provided for the filing of objections and requests for hearing. Several objections and requests for hearing were received.

On May 30, 1975 (40 FR 23458), the provisions of § 701.3 (a) through (q) were placed fully into effect with the exception of § 701.3(f) (1) and (2) provisions which were stayed. These provisions permit ingredients, other than color additives, present at concentrations of less than 1 percent to be cited without respect to order of predominance.

The Independent Cosmetic Manufacturers and Distributors (ICMAD) (and Shorell Products, Inc., by reference) objected to the provisions of paragraph (f) (1) and (2) on the ground that under the regulation some manufacturers "will be able to scramble essentially all important ingredients, and thus protect their formulas, while others will be required to divulge the relative quantities of essentially all ingredients." FDA concluded that this constituted a valid objection and the subject for hearing.

ICMAD has now withdrawn its objection and request for a hearing. Counsel for ICMAD has also informed FDA that ICMAD's action also constitutes the withdrawal of objection by Shorell Products, Inc., the co-objector with ICMAD, because the firm is a member of ICMAD. Accordingly, there are no longer any objections before FDA to the provisions of § 701.3(f) (1) and (2).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 70 Stat. 919 as amended (21 U.S.C. 371(e)) and the Fair Packaging and Labeling Act (secs. 5(c), 6(a), 80 Stat. 1298, 1299 (15 U.S.C. 1454, 1455)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that the objections received were withdrawn and that the partial stay of § 701.3 which was announced in the Federal Register of May 30, 1975 (40 FR 23458) is revoked. The requirements of 21 CFR 701.3(f) (1) and (2), as published in the Federal Register of March 3, 1975 (40 FR 8918), are now fully effective.

Effective date: This revocation of the stay is effective on November 30, 1979.

(Sec. 701(e), 70 Stat. 919 as amended (21 U.S.C. 371(e)); Secs. 5(c), 6(a), 80 Stat. 1298, 1299 (15 U.S.C. 1454, 1455))

Dated: November 23, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-36717 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR PART 1020

[Docket No. 75N-0046]

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard

AGENCY: The Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the performance standard for diagnostic x-ray systems and their major components to modify the beam quality (half-value layer) provision of the standard for dental x-ray systems designed for use with intraoral image receptors. This amendment will reduce the unnecessary x-radiation exposure to the patient that can result from low voltage, low filtration dental x-ray systems.

EFFECTIVE DATE: December 1, 1980.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of January 30, 1979 (44 FR 5908), FDA proposed to amend § 1020.30(m)(1) (21 CFR 1020.30(m)(1)) of the diagnostic x-ray systems performance standard to require that the half-value layer (HVL) of the useful beam of any dental x-ray system intended for use with intraoral image receptors operating at 70 kilovolts peak (kVp) and below be equivalent to at least 1.5 millimeters (mm) of aluminum (Al). The current provisions of the standard allow lower values for the HVL. Interested persons were given until April 30, 1979, to submit comments on the proposal, and comments received as late as May 8, 1979, were considered.

Most of the 11 comments received agreed with the proposed rule's general approach to the reduction of unnecessary radiation exposure. Five comments agreed wholly and three others agreed partially; of the three latter comments, one stated that in certain cases the filtration was too great, and the two others stated that in certain cases the filtration provided by the proposed HVL was still not great enough. Of the three negative comments, two disagreed explicitly with the proposed approach and suggested alternatives, and the third comment disagreed implicitly by questioning the agency's interpretation of data. Among the 11 comments, several raised specific technical issues.

Among the positive comments, one expressed "basic agreement" with this "positive step"; another called the change "necessary and appropriate." A professional organization characterized the proposed rule as "reasonable" and expected it to contribute to the reduction of unnecessary dose in dental x-ray examinations. A manufacturer commended the "proposed actions"; and a state radiation control agency said that these were "a much needed change that will bear fruit in * * * tremendous dose reduction with no loss in diagnostic information."

Among the negative comments, the chief objection was to the specific HVL. At 70 kVp and below, the proposed change provides for an increase in filtration to improve the beam quality, that is, to increase the proportion of photons useful for dental radiography and to reduce the proportion unnecessarily exposing the patient. Two comments referred to benefits that might be obtained above 70 kVp by decreasing the filtration to improve the beam quality.

The comments and the agency's response are as follows:

1. With respect to the proposed HVL for x-ray beams generated at 70 kVp and below, one comment stated that the change would not achieve the proposed rule's stated objective. The comment argued that the increased filtration required to achieve the HVL of 1.5 mm of Al would make it impossible to produce acceptable radiographs because of lack of x-ray output from the system. Eliminating low kVp radiographs, the comment maintained, would not serve those cases where greater contrast in the image is desired. Another comment from a State radiation control agency stated that the change in HVL falls short of being a reasonable health standard. The comment suggested that the minimum HVL for dental equipment operating at 70 kVp or below should be at least 2.0 mm of Al, and the comment noted that increasing filtration on low kVp dental units sufficient to meet this higher standard had brought that State agency many thanks and no negative feedback.

The dichotomy between these views highlights the problem of reducing patient exposure with minimum loss of available radiographic contrast. The proposed minimum HVL of 1.5 mm of Al equivalent was chosen by FDA as a reasonable compromise value. This value balances entrance dose reduction and available radiographic contrast against excessive exposure time, particularly at x-ray tube potentials below 65 kVp.

The agency's data show that most dental radiographers purchase and use a single unit with fixed kVp and filtration. One may reasonably conclude that the purchasers obtain usable results within the limited range of available radiographic contrast because they use only this unit for their patients. At the present time, fixed kVp dental x-ray units operating below 60 kVp are not being marketed in the United States; but variable kVp units capable of operating as low as 50 kVp are now being marketed with at least 2.5 mm Al equivalent of fixed total filtration. These marketed units are capable of providing adequate image contrast. The revised standard will not prevent the necessary diagnostic capability. However, to increase the minimum HVL requirement to 2.0 mm of Al equivalent would lengthen exposure times and would further reduce available radiographic contrast. The additional reduction in exposure accomplished by adding still more filtration does not justify these operation penalties.

The existing standard requires a minimum HVL of 1.5 mm of Al at 70 kVp; this HVL is generally achievable with a total filtration of 1.5 mm of Al equivalent at potentials as low as 65 kVp. For conventional single phase self-rectified units, the change in the standard would, in effect, require a total filtration greater than 1.5 mm of Al at potentials below 65 kVp and a total filtration slightly greater than 2.0 mm of Al at 50 kVp. Thus, in practical terms, conventional machines operating below 55 kVp would no longer be effective because of the excessive exposure times required for sufficient radiation output and could not be marketed in the U.S. in the future. The agency concludes, therefore, that the comments do not justify any change from the proposed HVL.

2. Two comments, one from a State radiation control agency and one from a manufacturer, argued for an alternative to improving the beam quality for x-ray beams produced at or below 70 kVp. The comments noted that the required filtration will result in reduced radiation output and concluded that longer exposure times, patient motion, and the inability to use optimum technique factors will produce inferior radiographic images. The second comment also mentioned retakes as a consequence. The two comments recommended that a minimum operating potential of 70 kVp be required for dental x-ray machines, even though this would cause the elimination of some units.

As discussed in paragraph 1 of the preamble to the proposal, the agency intends that dental x-ray systems provide x-ray beam qualities that yield the maximum diagnostic information with the minimum dose to the patient. This objective can be attained at tube potentials below 70 kVp. The agency believes that safe and effective use of dental x-ray machines is possible for systems operating below 70 kVp when these systems meet the new HVL requirement of 1.5 mm of Al. The agency also notes that units operating at low kVp could have increased milliampere (current) capabilities with their consequent increased useful radiation output to avoid longer exposure times with their consequent patient motion unsharpness. The recommendation is therefore rejected.

3. The same State agency and manufacturer also argued in favor of a minimum radiation output level. Another comment suggested that the use of higher output x-ray systems or the development of faster imaging devices should be encouraged because x-ray exposure rate may be of greater importance than has been previously recognized. The comment noted that, because exposure of a posterior periapical film in an adult may require 200 to 300 milliroentgens (mR), exposure times as long as 1 second would be required for systems operating at a minimum rate of 600 mR in 2 seconds. Although the comment does not state the tube potentials or film type being used in that example, it does imply that such exposure times are unacceptable.

As discussed at length in paragraph 6 of the proposal, the agency considered establishing a minimum exposure rate for all dental units to avoid excessive exposure times and motion unsharpness. The American Dental Association (ADA), however, has endorsed a maximum exposure time of 5 seconds for dental x-ray procedures. The agency agrees with the ADA argument that motion unsharpness is not a controlling image quality factor under usual conditions and within that time interval. Minimum system output levels are not required, therefore, under usual conditions to shorten that time interval. The agency will consider taking action if any marketed dental units require exposure times longer than 5 seconds or if further research demonstrates the need for exposure time limits. Such action should not be needed so long as available intraoral radiographic film is no slower than American National Standards Institute Speed Group D.

4. One comment questioned the statement in the preamble to the

proposal that suggested that an HVL of 1.5 mm at 50 kVp would be achieved with a total filtration of 2.5 mm of Al equivalent. The comment cited data in a 1968 report of the National Council on Radiation Protection and Measurements (NCRP), Report No. 33 (Ref. 1), which shows an HVL of 1.49 mm of Al equivalent to a total filtration of 2.0 mm of Al. The NCRP data reflect the minimum filtration that, under optimum conditions, can achieve a given HVL. The preamble statement reflected the approximate equivalent filtration that would safely achieve the required HVL of 1.5 mm Al.

The two are not contradictory. Further, the agency advises that the standard establishes minimum HVL's for given tube potentials. It does not specify the amount of filtration to be used or the means to achieve the necessary HVL. The comment requires no change in the final rule.

5. One comment asked for a further explanation of FDA's rationale for the proposed HVL for x-ray beams generated above 70 kVp. The comment agreed that reduction in the HVL would increase the skin entrance dose, but it pointed out that the integral dose would decrease. This effect, the comment said, could be seen in the data referred to only in part in the preamble to the June 19, 1975 advance notice of proposed rulemaking (40 FR 25830). The comment contended that the totality of the data shows that reduced patient dosages would result from a decrease in filtration at high kVp and asked whether any other data were available that lead the agency to maintain the present HVL requirements for systems operating above 70 kVp. Another comment presented illustrations to show that less filtration would achieve the proposal's objectives. This comment argued that a filter functions to remove from the x-ray beam more of those photons that do not contribute to the formation of an image on the film than those that do contribute, thus reducing the relative amount of needless exposure of the patient. Because an increase in potential increases the relative amount of useful photons as well as the total number of photons (when exposure time, milliamperage, and filtration are being held constant), exposure time can be shortened for high kVp. Therefore, the comment argued, the filtration should not be increased because it will decrease the number of useful photons and increase the total exposure. Instead, filtration should be decreased.

The agency has considered reducing present HVL requirements at high potentials as an approach to allowing more latitude in designing acceptable x-ray equipment. However, too few modern research reports are available to show sufficiently improved imaging quality to justify the somewhat higher entrance doses produced. In addition, several State agencies enforcing present requirements questioned allowing higher entrance doses when dental radiographers seem satisfied with the machines as presently equipped. In the absence of definitive studies showing substantial improvement in imaging quality or reduction in patient exposure from beams of lower HVL at accelerating potentials greater than 70 kVp, the agency concludes that the present standard must be continued.

6. One of the comments misunderstood Table I as published in the proposal and asked why the table showed HVL values less than 1.5 mm Al for tube voltages less than 70 kVp. Another comment understood Table I, to contain altered filtration requirements for all classes of dental equipment.

FDA included Table I in the proposal only for the convenience of the reader, but it recognizes that the inclusion may have been confusing because the table was identical to Table I in current § 1020.30(m). The table referred to x-ray systems other than those affected by the proposed revision to § 1020.30(m), namely nondental units, dental units designed for use with extraoral image receptors, and dental x-ray units manufactured or assembled before the effective date of this amendment. To clarify the distinction between new dental units designed for use with intraoral image receptors and other diagnostic x-ray systems, § 1020.30(m) has been rewritten and Table I has been restructured. These changes did not alter the meaning of either. The final version of the rule should prevent similar misunderstandings in the future.

7. One comment suggested that FDA encourage the matching of HVL requirements of the x-ray system to the image receptors with which it is to be used. The comment noted that many image receptors have an energy-dependent response and that their use, particularly in special procedures, is most efficient when beam quality matches receptor sensitivity; however, the comment did not identify the special procedures for which this need exists.

The agency has considered the energy dependence and speed of currently used image receptors. Radiographic silver bromide gelatin-emulsion film continues to be essentially the only intraoral image receptor in use. The energy response of this film seems reasonably well matched to the beam quality generated by modern dental x-ray units. Therefore, the agency concludes that the comment does not require any further revision to the standard at this time.

8. One comment noted that the proposal would require beam quality to be evaluated by the voltage applied to the x-ray tube and argued that the need for and the quality of required filtration cannot be evaluated in this manner because HVL and voltage applied to the tube cannot be equated.

Both HVL of the x-ray beam and operating potential of the x-ray tube must be measured under the same conditions. Both the existing and the proposed agency standards for minimum beam quality require that HVL be measured at (not "by") specified kVp because HVL alone is not sufficient to specify beam quality. For compliance testing and premarket certification, manufacturers measure both parameters together. In practice, beam quality also depends on the waveforms of voltage and current. However, a beam generated by a single phase, self-rectified, x-ray machine is assumed for the values stated in the standard. The comment is rejected.

Reference

National Council on Radiation Protection and Measurements, "Medical X-ray and Gamma-Ray protection for Energies up to 10 MeV—Equipment Design and Use," NCRP Report No. 33, Washington, DC, February 1, 1968; available from NCRP Publications, P.O. Box 30175, Washington, DC 20014.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 as amended (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), 21 CFR part 1020 is amended by revising § 1020.30(m)(1) to read as follows:

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

* * * * *

(m) *Beam quality*—(1) *Half-value layer.* The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the appropriate value shown in Table I under "Specified dental systems," for any dental x-ray system designed for use with intraoral image receptors and manufactured after December 1, 1980; and under "Other x-ray systems," for all other x-ray systems subject to this section.

Table I

X-ray tube voltage (kilovolt peak)		Minimum HVL (mm of Al)	
Designed operating range	Measured operating potential	Specified dental systems	Other X-ray systems
Below 50	30	1.5	0.3
	40	1.5	0.4
	49	1.5	0.5
50 to 70	50	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made. Positive means [2] shall be provided to insure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure.

* * * * *

Effective date. This amendment becomes effective December 1, 1980.

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

Dated: November 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-36581 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

[2] In the case of a system which is to be operated with more than on thickness of filtration, this requirement can be met by a filter interlock with the kilovoltage selector which will prevent x-ray emission if the minimum required filtration is not in place.

DEPARTMENT OF STATE

22 CFR Parts 7, 50, and 51

[Dept. Reg. 108.783]

Board of Appellate Review, Nationality Procedures, Passports; Miscellaneous Amendments

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule revises and amends the regulations relating to the Department of State's Board of Appellate Review and to procedures for the disposition of appeals from administrative determinations made by the Department of State (1) that an individual has lost his or her United States nationality or has been expatriated, or (2) that a United States passport be denied, revoked, restricted or invalidated.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Edward G. Misey, Chairman, Board of Appellate Review, Department of State, Washington, D.C. 20520, phone (703) 235–9610.

SUPPLEMENTARY INFORMATION: These regulations consolidate in 22 CFR Part 7 the substance of regulations on the subject of appeals in nationality and passport cases that appear in Parts 50 and 51 of the regulations, and clarify procedures concerning the filing of appeals, submission of briefs, limitations on actions, and decisions of the Board. A notice of proposed rule making was published in the Federal Register on July 6, 1979 (44 FR 39473). All interested persons were invited to submit written comments regarding the proposed regulations by September 4, 1979. No substantive comments were received.

Applicable legal citations which were inadvertently omitted from the text in the notice of proposed rule making have been added. In addition, certain editorial changes in the interest of clarity have been made. With these exceptions, the text published in the notice of proposed rule making is adopted as set forth below.

For the Secretary of State.
Dated: November 26, 1979.

Ben H. Read,

Under Secretary for Management.

1. Part 7 is revised to read as set forth below.

PART 7—BOARD OF APPELLATE REVIEW

Sec.
7.1 Definitions.
7.2 Establishment of Board of Appellate Review; purpose.
7.3 Jurisdiction.
7.4 Membership and organization.
7.5 Procedures.
7.6 Hearings.
7.7 Passport cases.
7.8 Decisions.
7.9 Motion for reconsideration.
7.10 Computation of time.
7.11 Attorneys.

Authority.—Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended, 22 U.S.C. 211a, 2658; secs. 104, 360, 66 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36 FR 10603; 3 CFR 1966–1970 Comp., page 507.

§ 7.1 Definitions

(a) "Board" means the Board of Appellate Review or the panel of three members considering an appeal.

(b) "Department" means the Department of State.

(c) "Party" means the appellant or the Department of State.

§ 7.2 Establishment of Board of Appellate Review; purpose.

(a) There is hereby established the Board of Appellate Review of the Department of State to consider and determine appeals within the purview of § 7.3. The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

(b) For administrative purposes, the Board shall be part of the Office of the Legal Adviser. The merits of appeals or decisions of the Board shall not be subject to review by the Legal Adviser or any other Department official.

§ 7.3 Jurisdiction.

The jurisdiction of the Board shall include appeals from decisions in the following cases:

(a) Appeals from administrative determinations of loss of nationality or expatriation under subpart C of Part 50 of this Chapter.

(b) Appeals from administrative decisions denying, revoking, restricting or invalidating a passport under §§ 51.70 and 51.71 of this Chapter.

(c) Appeals from final decisions of contracting officers arising under contracts or grants of the Department of State, not otherwise provided for in the Department of State contract appeal regulations (Part 6–60 of Title 41).

(d) Appeals from administrative decisions of the Department of State in such other cases and under such terms of reference as the Secretary of State may authorize.

§ 7.4 Membership and organization.

(a) *Membership.* The Board shall consist of regular and ad hoc members as the Legal Adviser may designate. Regular members shall serve on a fulltime basis. Ad hoc members may be designated from among senior officers of the Department of State or from among persons not employed by the Department. Regular and ad hoc members shall be attorneys in good standing admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) *Chairman.* The Legal Adviser shall designate a regular member of the Board as Chairman. A member designated by the Chairman shall act in the absence of the Chairman. The Chairman or designee shall preside at all proceedings before the Board, regulate the conduct of such proceedings, and pass on all issues relating thereto.

(c) *Composition.* In considering an appeal, the Board shall act through a panel of three members, not more than two of whom shall be ad hoc members.

(d) *Rules of procedure.* The Board may adopt and promulgate rules of procedure approved by the Secretary of State as may be necessary to govern its proceedings.

§ 7.5 Procedures.

(a) *Filing of appeal.* A person who has been the subject of an adverse decision in a case falling within the purview of § 7.3 shall be entitled upon written request made within the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity reasons for the appeal. The appeal may by accompanied by a legal brief. An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

(b) *Time limit on appeal.* (1) A person who contends that the Department's administrative determination of loss of nationality or expatriation under subpart C of Part 50 of this Chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality or a certificate of expatriation.

(2) A person who has been subject of an adverse decision under § 51.89, of this Chapter shall be entitled to appeal the decision to the Board upon written request made within 60 days after receipt of notice of such decision.

(3) Time limits for other appeals shall be established by the Board as appropriate.

(c) *Department case record.* Upon the written request of the Board, the office or bureau in the Department of State responsible for the decision from which the appeal was taken shall assemble and transmit to the Board within 45 days the record on which the Department's decision in the case was based. The case record may be accompanied by a memorandum setting forth the position of the Department on the case.

(d) *Briefs.* Briefs in support of or in opposition to an appeal shall be submitted in triplicate to the Board. The appellant shall submit his or her brief within 60 days after filing of the appeal. The Department shall then file a brief within 60 days after receipt of a copy of appellant's brief. Reply briefs, if any, shall be filed within 30 days after the date the Department's brief is filed with the Board. Extension of time for submission of a reply brief may be granted by the Board for good cause shown. Posthearing briefs may be submitted upon such terms as may be agreed to by the parties and the presiding member of the Board at the conclusion of a hearing.

(e) *Hearing.* An appellant shall be entitled to a hearing upon written request to the Board. An appellant may elect to waive a hearing and submit his or her appeal for decision on the basis of the record before the Board.

(f) *Pre-hearing conference.* Whether there is a hearing before the Board on an appeal or whether an appeal is submitted for decision on the record without a hearing the Board may call upon the parties to appear before a member of the Board for a conference to consider the simplification or clarification of issues and other matters as may aid in the disposition of the appeal. The results of the conference shall be reduced to writing by the presiding Board member, and this writing shall constitute a part of the record.

(g) *Admissibility of evidence.* Except as otherwise provided in § 7.7, the parties may introduce such evidence as the Board deems proper. Formal rules of evidence shall not apply, but reasonable restrictions shall be imposed as to the relevancy, competency and materiality of evidence presented.

(h) *Depositions.* The Board may, upon the written request of either party or upon agreement by the parties, permit the taking of the testimony of any person by deposition upon oral examination or written interrogatories for use as evidence in the appeal proceedings. The deponent shall be subject to cross-examination either by oral examination or by written interrogatories by the opposing party or by the Board. Leave to take a deposition shall not be granted unless it appears impracticable to require the deponent's testimony at the hearing on the appeal, or unless the taking of a deposition is deemed to be warranted for other valid reasons.

(i) *Record of proceedings.* The record of proceedings before the Board shall consist of the Department's case record, briefs and other written submissions of the parties, the stipulation of facts, if any, the evidence admitted, and the transcript of the hearing if there is a hearing. The record shall be available for inspection by the parties at the Office of the Board.

(j) *Scope of review.* Except as otherwise provided in § 7.7, the Board shall review the record in the case before it. The Board shall not consider argument challenging the constitutionality of any law or of any regulation of the Department of State or take into consideration any classified or administratively controlled material.

(k) *Appearance before the Board.* Any party to any proceeding before the Board is entitled to appear in person or by or with his or her attorney, who must possess the requisite qualifications, set forth in § 7.11, to practice before the Board.

(l) *Failure to prosecute an appeal.* Whenever the record discloses the failure of an appellant to file documents required by these regulations, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution of an appeal, the Board may in its discretion terminate the proceedings without prejudice to the later reinstatement of the appeal for good cause shown.

§ 7.6 Hearings.

(a) *Notice and place of hearing.* The parties shall be given at least 15 days notice in writing of the scheduled date and place of a hearing or an appeal. The Board shall have final authority to fix or change any hearing date giving consideration to the convenience of the parties. Hearings shall be held at the Department of State, Washington, D.C., unless the Board determines otherwise.

(b) *Conduct of hearing.* The appellant may appear and testify on his own behalf. The parties may present witnesses, offer evidence and make argument. The appellant and witnesses may be examined by any member of the Board, by the Department, and by the appellant's attorney, if any. If any witness whom the appellant or the Department wishes to call is unable to appear personally, the Board in its discretion, may accept an affidavit by the witness or grant leave to take the deposition of such witness. Any such witness will be subject to cross examination by means of sworn responses to interrogatories posed by the opposing party. The appellant and the Department shall be entitled to be informed of all evidence before the Board and of the source of such evidence, and to confront and cross-examine any adverse witness. The Board may require a stipulation of facts prior to or at the beginning of the hearing and may require supplemental statements on issues persented to it, or confirmation, verification or authentication of any evidence submitted by the parties. The parties shall be entitled to reasonable continuances upon request for good cause shown.

(c) *Privacy of hearing.* The hearing shall be private unless an appellant requests in writing that the hearing be open to the public. Attendance at the hearing shall be limited to the appellant, attorneys of the parties, the members of the Board, Department personnel who are directly involved in the presentation of the case, official stenographers, and the witnesses. Witnesses shall be present at the hearing only while they are giving testimony or when otherwise directed by the Board.

(d) *Transcript of hearing.* A complete verbatim transcript shall be made of the hearing by a qualified reporter, and the transcript shall constitute a permanent part of the record. Upon request, the appellant shall have the right to inspect the complete transcript and to purchase a copy thereof.

(e) *Nonappearance of a party.* The unexcused absence of a party at the time and place set for a hearing shall not be occasion for delay. In the event of such absence, the case will be regarded as having been submitted by the absent party on the record before the Board.

§ 7.7 Passport cases.

(a) *Scope of review.* With respect to appeals taken from decisions of the Assistant Secretary for Consular Affairs denying, revoking, restricting, or invalidating a passport under §§ 51.70 and 51.71 of this Chapter, the Board's review, except as provided in paragraph (b) of this section, shall be limited to the record on which the Assistant Secretary's decision was based.

(b) *Admissibility of evidence.* The Board shall not receive or consider evidence of testimony not presented at the hearing held under §§ 51.81–51.89 of this Chapter unless it is satisfied that such evidence or testimony was not available or could not have been discovered by the exercise of reasonable diligence prior to such hearing.

§ 7.8 Decisions.

The Board shall decide the appeal on the basis of the record of the proceedings. The decision shall be by majority vote in writing and shall include findings of fact and conclusions of law on which it is based. The decision of the Board shall be final, subject to § 7.9. Copies of the Board's decision shall be forwarded promptly to the parties.

§ 7.9 Motion for reconsideration.

The Board may entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

§ 7.10 Computation of time.

In computing the period of time for taking any action under this part, the day of the act, event, or notice from which the specified period of time begins to run shall not be included. The last day of the period shall be included, unless it falls on a Saturday, Sunday, or a legal holiday, in which event the period shall extend to the end of the next day which is not a Saturday, Sunday, or a legal holiday. The Board for good cause shown may in its discretion enlarge the time prescribed by this part for the taking of any action.

§ 7.11 Attorneys.

(a) Attorneys at law who are admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States, and who are members of the Bar in good standing, may practice before the Board unless disqualified under paragraph (b) of this section or for some other valid reason.

(b) No attorney shall be permitted to appear before the Board as attorney representing an appellant if he or she is subject to the conflict of interest provisions of chapter 11 of Title 18 of the United States Code.

PART 50—NATIONALITY PROCEDURES

2. Part 50, Nationality Procedures, is amended by adding a new § 50.52 to read as set forth below, and to delete Subpart D, Procedures for Review of Loss of Nationality, §§ 50.60 through 50.72.

§ 50.52 Notice of right to appeal.

When an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this Chapter) within one year after approval of the certificate of loss of nationality or the certificate of expatriation.

§§ 50.60–50.72 [Revoked]

(Sec. 4, 63 Stat. 111, as amended, secs. 104, 360, 66 Stat. 174, 273; 22 U.S.C. 2658, 8 U.S.C. 1104, 1503.)

PART 51—PASSPORTS

3. Part 51, Passports, is amended by changing the title of section 51.89 and by incorporating in § 51.89 part of § 51.90 to read as set forth below, and to delete the remaining §§ 51.90 through 51.105.

§ 51.89 Decision of Assistant Secretary for Consular Affairs; notice of right to appeal.

The person adversely affected shall be promptly notified in writing of the decision of the Assistant Secretary for Consular Affairs and, if the decision is adverse to him or her, the notification shall state the reasons for the decision and inform him or her of the right to appeal the decision to the Board of Appellate Review (Part 7 of this Chapter) within 60 days after receipt of notice of the adverse decision. If no appeal is made within 60 days, the decision will be considered final and not subject to further administrative review.

§§ 51.90–51.105 [Revoked]

(Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended, 22 U.S.C. 211a, 2658, E.O. 11295, 36 FR 10603; 3 CFR, 1966–1970 Comp., page 507.)

[FR Doc. 79-36663 Filed 11-29-79; 8:45 am]
BILLING CODE 4710-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Lead; Corrections

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

ACTION: Corrections to the Appendices of the final standard for occupational exposure to lead.

SUMMARY: OSHA's final standard for occupational exposure to lead was published in the Federal Register on November 14, 1978 (43 FR 52952; FR Doc. 78-31911) and November 21, 1978 (43 FR 54354; FR Doc. 78-31912). Appendices to the final standard were published in the Federal Register on October 23, 1979 (44

FR 60981); FR Doc. 79-32637. This notice lists corrections to the appendices.

FOR FURTHER INFORMATION CONTACT: OSHA Office of Compliance Programming, U.S. Department of Labor, Room N-3112, Washington, D.C. 20210, Telephone 202-523-8034.

SUPPLEMENTARY INFORMATION: FR Document 79-32637 is corrected as follows:

1. Page 60981, Column 1, line 50 change "Content" to "content".
2. Page 60981, Column 2, line 19 change "Protection" to "protection"; "Goals" to "goal"; and "Standard" to "standard".
3. Page 60982, Column 1, line 29 change "an" to "as".
4. Page 60982, Column 1, line 35 change "Symtoms" to "symptoms".
5. Page 60982, Column 1, line 37 change "tast" to "taste".
6. Page 60982, Column 1, line 40 change "insomina" to "insomnia".
7. Page 60984, Column 2, line 31 change "shoes" to "shoe".
8. Page 60984, Column 3, line 66 delete the comma after "additional".
9. Page 60985, Column 2, line 56 change "types" to "types of".
10. Page 60986, Column 1, line 53 change "imitations" to "limitations".
11. Page 60987, Column 3, line 29 change "personnel" to "personal".
12. Page 60988, Column 1, line 40 change "occupationsl" to "occupational".
13. Page 60988, Column 2, line 22 change "prophlactic" to "prophylactic".
14. Page 60988, Column 3, line 5 change "synethesis" to "synthesis".
15. Page 60989, Table 2: Change in A of Table 2 all ">" signs to "≥" signs; in C of Table 2 change "O mg/m³" to "100 μg/m³"; in D of Table 2 change all "<" signs to "≤" signs.
16. Page 60990, Column 2, line 53 change "employee" to "employer".
17. Page 60991, Column 1, line 3 change "be available" to "be made available".
18. Page 60993, Column 1, line 68 change "poisioning" to "poisoning".
19. Page 60994, Column 1, line 28 delete the following sentence beginning with "Under" and ending with "greater."
20. Page 60994, Column 1, line 34 change "spectrophotometry." to "spectrophotometry, anodic stripping voltammetry or any method which meets the accuracy requirements set forth by the standard."
21. Page 60994, Column 2, line 32 change "ZPP or" to "ZPP of".
22. Page 60994, Column 2, line 40 after "spectrophotometry," add "anodic stripping voltammetry, or any method which meets the accuracy requirements set forth by the standard".
23. Page 60994, Column 2, line 41 change "certified" to "approved".
24. Page 60994, Column 3, line 13 change the period after "rapid" to a comma.
25. Page 60988, Column 1, line 48 change "inorganic lead" to "inorganic lead*" and add the following footnote: "*The term inorganic lead used throughout the medical surveillance appendices is meant to be synonymous with the definition of lead set forth in the standard."

Signed at Washington, D.C., this 21st day of November 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-38689 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Metal and Nonmetal Mine Safety; Advisory Standards Revoked or Revised and Made Mandatory

Corrections

In FR Doc. 79-25130 appearing at page 48490 in the issue of Friday, August 17, 1979, make the following corrections:

1. On page 48518, second column, § 55.13, paragraph (d) of standard 55.13-30, the second paragraph should be a continuation of the first paragraph; also, "§ 55.14, standard 55.14-3, fifth line, behing" should read "behind".
2. On page 48519, second column, § 55.18, paragraph (c) of standard 55.18-2, sixth line, "affectd" should read "affected"; and in the third column, § 55.19, standard 55.19-37, second line, insert a comma after "1979".
3. On page 48523, second column, § 56.13, paragraph (b) of standard 56.13-10, fifth line, insert a comma after "1979"; and in the third column, § 56.13, paragraph (b) of standard 56.13-15, first line, "inspection" should read "inspections".
4. On page 48524, second column, § 56.13, paragraph (d) of standard 56.13-30, the second paragraph should be a continuation of the first paragraph; and under § 56.14, in the reserve entry set out in the paragraph numbered 2, delete the section symbol before 56.14-4.
5. On page 48525, third column, § 56.19, standard 56.19-37, second line, delete "February 14, 1980" and insert "November 15, 1979".
6. On page 48527, third column, § 57.4, standard 57.4-41, fourth line, "excape" should read "escape"; and in paragraph (b)(1) of standard 57.4-43, third line, delete "1979" and insert "1980".
7. On page 48528, first column, § 57.4, standard 57.4-47, ninth line, "swtich" should read "switch"; and in the second column, paragraph (a) of standard 57.4-61B, seventh line, insert a period after "section 57.2"; also, in the third column, § 57.5, standard 57.5-25, sixth line, "secretary" should read "Secretary".
8. On page 48531, first column, § 57.11, standard 57.11-37, second line, insert a comma after "1979".
9. On page 48532, first column, § 57.13, paragraph (b) of standard 57.13-10, fifth line, insert a comma after "1979"; in paragraph (a) of standard 57.13-15, eleventh line, "Distict" should read "District"; and in the second and third columns, the information under (b) (1) and (2) of standard 57.13-30 should read as set forth below:

(1) The ASME Boiler and Pressure Vessel Code, 1977, published by the American Society of Mechanical Engineers.

Section and Title

I Power Boilers
II Material Specifications—Part A—Ferrous
II Material Specifications—Part B—Nonferrous
II Material Specifications—Part C—Welding Rods, Electrodes, and Filler Metals
IV Heating Boilers
V Nondestructive Examination
VI Recommended Rules for Care and Operation of Heating Boilers
VII Recommended Rules for Care of Power Boilers

(2) The National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979, published by the National Board of Boiler and Pressure Vessel Inspectors.

Chapter and Title

I Glossary of Terms
II Inspection of Boilers and Pressure Vessels
III Repairs and Alterations to Boiler and Pressure Vessels by Welding
IV Shop Inspection of Boilers and Pressure Vessels
V Inservice Inspection of Pressure Vessels by Authorized Owner-User Inspection Agencies

Appendix and Title

A Safety and Safety Relief Valves
B Non-ASME Code Boilers and Pressure Vessels
C Storage of Mild Steel Covered Arc Welding Electrodes
D-R National Board "R" (Repair) Symbol Stamp
D-VR National Board "VR" (Repair of Safety and Safety Relief Valve) Symbol Stamp
D-VR1 Certificate of Authorization for Repair Symbol Stamp for Safety and Safety Relief Valves
D-VR2 Outline of Basic Elements of Written Quality Control System for Repairers of ASME Safety and Safety Relief Valves

D–VR3 Nameplate Stamping for "VR"
E Owner-User Inspection Agencies
F Inspection Forms

9. On page 48532, third column, § 57.13, paragraph (d) of standard 57.13–30, twelfth line, "Vesel" should read "Vessel".

BILLING CODE 1505-01-M

30 CFR Parts 55, 56 and 57

Metal and Nonmetal Mine Safety; Correction

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

ACTION: Final Rule; Correction.

SUMMARY: This action corrects the Mine Safety and Health Administration's final rules amending 30 CFR Parts 55, 56 and 57 published in the Federal Register on August 17, 1979, which converted advisory standards to new and revised mandatory standards (44 FR 48490) and revised certain explosive standards (44 FR 48535) applicable to metal and nonmetal mining and milling operations.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, Ballston Tower No. 3, Room 717, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–8646.

A. The following change is made to correct an error in FR Doc. 79–25130:

On page 48528, column 3, § 57.5, paragraph number "2", strike the entire entry and substitute the following:

2. Advisory standard 57.5–21 and 57.5–23 are revoked, standard numbers 57.5–21 and 57.5–23 are reserved, and reserved standard number 57.5–24 is revised as follows:

57.5–21 [Reserved]

* * * * *

57.5–23 and 57.5–24 [Reserved]

B. The following change is made to correct an error in FR Doc. 79–25131:

On page 48544, column 2, § 57.6, paragraph number "2", delete the entire entry and substitute the following:

2. A new center heading entitled "MISCELLANEOUS" is added immediately below the standard number 57.6–249, and a new center heading entitled "GENERAL—SURFACE AND UNDERGROUND" is added immediately below the new heading "MISCELLANEOUS."

Dated: November 21, 1979.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-36547 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1367-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces approval of a request by the State of Wisconsin for an extension until March 1, 1980 of the statutory timetable for submittal of the portion of its State Implementation Plan (SIP) revision which provides for attaining the Secondary National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP). The portion of the Wisconsin SIP addressing particulate secondary non-attainment areas must be submitted by March 1, 1980 for the EPA's approval or disapproval by September 1, 1980. The following eleven nonattainment areas are the subject of the extension: Brokaw, Green Bay, Kenosha, La Crosse, Madison, Manitowoc, Marshfield, Neenah, Oshkosh, Racine, and Superior.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Miller, Wisconsin State Specialist, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: On February 22, 1979, the Secretary of the Wisconsin Department of Natural Resources submitted a request to the Region V Regional Administrator for an extension until March 1980 to submit the portion of the Wisconsin SIP which provides for attaining and maintaining the Secondary NAAQS for TSP. On April 16, 1979, the Director of the Bureau of Air Management submitted additional information justifying the need for the extension.

This request is in conformance with section 110(b) of the Clean Air Act and 40 CFR 51.31, which allow a State under certain conditions to request an extension for up to 18 months for submitting that portion of its SIP which provides for attainment of a secondary NAAQS.

On July 6, 1979 (44 FR 39485) the EPA proposed for public comment the approval of Wisconsin's extension request. Interested parties were given until August 6, 1979, to submit written comments on the request for an extension and on the EPA's proposed approval. No comments were received.

Wisconsin has demonstrated to the EPA that attainment of the secondary standard in these areas cannot be achieved through the application of reasonably available control technology (RACT).

Wisconsin has properly given notice of the request extension to the State of Minnesota, which has two joint air quality control regions (AQCR) containing nonattainment areas: the Duluth (Minnesota)-Superior (Wisconsin) AQCR, and the Southeast Minnesota-La Crosse (Wisconsin) Interstate AQCR.

Because Wisconsin has met the extension requirements in 40 CFR 51.31 and because the Administrator finds that it is necessary to approve the Wisconsin request, the EPA today is approving an extension until March 1, 1980 for submittal of the portion of Wisconsin's SIP which provides for attainment and maintenance of the secondary TSP NAAQS in Brokaw, Green Bay, Kenosha, La Crosse, Madison, Manitowoc, Marshfield, Neenah, Oshkosh, Racine, and Superior. Because of this submittal extension, EPA's approval or disapproval action is accordingly extended until September 1, 1980.

During this extension until September 1, 1980, the Emission Offset Interpretative Ruling published January 16, 1979 (44 FR 3274) will apply to the eleven secondary nonattainment areas which are all areas violating only a Secondary NAAQS. If during the extension, however, the State submits and EPA approves a SIP revision containing preconstruction review provisions which satisfy the requirements of Part D of the Act, the preconstruction review provisions of the revised SIP rather than the interpretative ruling will apply in the eleven secondary nonattainment areas.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart YY—Wisconsin

1. § 52.2570(c), is amended to add a new paragraph (12) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(12) A request for an extension of the statutory timetable for the submittal of the portion of the Wisconsin SIP which provides for the attainment of the Secondary NAAQS for TSP was submitted by the Secretary, Wisconsin DNR, on February 22, 1979, and was supplemented with additional information on April 16, 1979.

2. New § 52.2582, is added to read as follows:

§ 52.2582 Extensions.

(a) The Administrator hereby extends until March 1980 the statutory timetable for submission of Wisconsin's plan for attainment and maintenance of the Secondary NAAQS for TSP in Brokaw, Green Bay, Kenosha, La Crosse, Madison, Manitowoc, Marshfield, Neenah, Oshkosh, Racine, and Superior. The plan will be due on March 1, 1980.

(42 U.S.C. 7410(b).)

Dated: November 26, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36895 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[Docket No. A-79-1; FRL 1347-5]

Approval of a Delayed Compliance Order Issued by North Dakota State Department of Health to U.S. Noonlite, Ltd.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Environmental Protection Agency to the U.S. Noonlite, Ltd. The Order requires the company to bring air emissions from its lightweight aggregate production facility at Mandan, North Dakota, into Compliance with certain regulations contained in the federally-approved North Dakota Implementation Plan (SIP). Because of the Administrator's approval, compliance by U.S. Noonlite, Ltd., with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: A copy of the Delayed compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Loretta Pickerell, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: On May 31, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 31232, a notice proposing approval of a delayed compliance order issued by North Dakota State Department of Health to the U.S. Noonlite, Ltd. The notice asked for public comments by July 2, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to U.S. Noonlite, Ltd., is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places U.S. Noonlite, Ltd., on a schedule to bring its air emissions from its lightweight aggregate production facility at Mandan, North Dakota, into compliance as expeditiously as practicable with Sections 33-15-03-01 and 33-15-05-01 of the North Dakota Air Pollution Control Regulations, a part of the federally-approved North Dakota State Implementation Plan. If the conditions of the Order are met, it will permit U.S. Noonlite, Ltd. to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Company is unable to immediately comply with these regulations.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.391 to read as follows:

§ 65.391 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * * * *

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
U.S. Noonlite Ltd	Mandan, N. Dak	A-79-1	Sec. 33-15-03-01 and 33-15-05-01.	May 31, 1979	July 1, 1979.
*	*	*	*	*	*

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place U.S. Noonlite, Ltd., on a schedule which is effective under the Clean Air Act for compliance

with the applicable requirements of the North Dakota State Implementation Plan.

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

Dated: November 19, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36881 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[Docket No. A-79-7; FRL 1357-5]

Disapproval of a Delayed Compliance Order Issued by the State of Wyoming, Department of Environmental Quality to Black Hills Power & Light Co.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby disapproves a Delayed Compliance Order issued by the State of Wyoming, Department of Environmental Quality to the Black Hills Power and Light Company. The Order requires the Company to bring air emissions from its boiler units 1, 3, and 4 at its (old) Wyodak Station power plant located east of Gillette, Wyoming, into compliance with certain regulations contained in the Wyoming State Implementation Plan (SIP).

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing disapproval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Cay White, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: On April 16, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 22480, a notice proposing disapproval of a delayed compliance order issued by the State of Wyoming, Department of Environmental Quality, Black Hills Power and Light Company. The notice asked for public comments by May 16, 1979, on EPA's proposed disapproval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to Black Hills Power and Light Company, is disapproved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). EPA disapproves this order because the Order contemplates that compliance will be achieved through termination of operation of the boilers. Compliance by termination of operation is not permissable under the terms of Section 113(d)(1) of the Clean Air Act.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.552 to read as follows:

§ 65.552 EPA disapproval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
Black Hills Power & Light Co.	East of Gillette, Wyo	A-79-7	Sec. 14(b) and 14(h).		Apr. 16, 1979.

Dated: November 19, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36879 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[Docket No. A-79-6; FRL 1347-4]

Approval of a Delayed Compliance Order Issued by the State of Wyoming, Department of Environmental Quality to FMC Corporation, Kemmerer, Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Wyoming, Department of Environmental Quality, to FMC Corporation. The Order requires the company to bring air emissions from its front end incinerator at its Industrial Chemical Group Plant at Kemmerer, Wyoming, into compliance with certain regulations contained in the Wyoming State Implementation Plan (SIP). Because of the Administrator's approval, FMC Corporation's complaince with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Cay White, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: On April 16, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 22481, a notice proposing approval of a delayed compliance order issued by the State of Wyoming, Department of Environmental Quality to FMC Corporation. The notice asked for public comments by May 11, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to FMC Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places FMC

Corporation on a schedule to bring its air emissions from the front end incinerator at its Industrial Chemical Group Plant at Kemmerer, Wyoming, into compliance as expeditiously as practicable with Sections 14(b) and 14(g) of the Wyoming Air Quality Standards and Regulations, a part of the federally-approved Wyoming State Implementation Plan. If the conditions of the Order are met, it will permit FMC Corporation, to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Company is unable to immediately comply with these regulations. In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.551 to read as follows:

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

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
FMC Corp	Kemmerer, Wyo	A-79-6	Sec. 14(b) and 14(g).	Apr. 16, 1979	July 1, 1979

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place FMC Corporation, on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Wyoming State Implementation Plan.

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

Dated: November 19, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36880 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[Docket No. A-79-8; FRL 1347-7]

Approval of a Delayed Compliance Order Issued by the State of Wyoming, Department of Environmental Quality to CF&I Steel Corporation, Sunrise, Wyo.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Wyoming, Department of Environmental Quality, to the CF&I Steel Corporation, Sunrise Mine, Sunrise, Wyoming. The Order requires the company to bring air emissions from iron ore driers #1 and #2 at the Sunrise Mine located in Sunrise, Wyoming, into compliance with applicable regulations contained in the Wyoming State Implementation Plan (SIP). Because of the Administrator's approval, compliance by CF&I Steel Corporation, Sunrise Mine with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: A copy of the Delayed compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Cay White, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: On May 7, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 26767, a notice proposing approval of a delayed compliance order issued by the State of Wyoming, Department of Environmental Quality to CF&I Steel Corporation, Sunrise Mine. The notice asked for public comments by June 6, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to CF&I Steel Corporation, Sunrise Mine, is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places CF&I Steel Sunrise Mine, on a schedule to bring its air emissions from iron ore driers #1 and #2 at Sunrise, Wyoming, into compliance as expeditiously as practicable with Section 14(g) of the Wyoming Air Quality Standards and Regulations, a part of the federally-approved Wyoming State Impelementation Plan. If the conditions of the Order are met, it will permit CF&I Steel Corporation, Sunrise Mine, to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Company is unable to immediately comply with these regulations. In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.551 to read as follows:

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

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
CF & I STEEL Corp, Sunrise Mine.	Sunrise, Wyo	A-79-8	Sec. 14(g)	May 7, 1979	July 1, 1979.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place CF&I Steel Corporation, Sunrise Mine, on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Wyoming State Implementation Plan.

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

Dated: November 19, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36877 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[Docket No. A-79-9; FRL 1347-6]

Approval of a Delayed Compliance Order Issued by the State of Wyoming, Department of Environmental Quality to U.S. Steel Corporation Western Ore Operation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Wyoming, Department of Environmental Quality, to United States Steel Corporation, Western Ore Operation, located near Atlantic City, Wyoming. The Order requires U.S. Steel Corporation to bring emissions from the waste gas fan on lines #1 and #2 of the agglomerating process at the Western Ore Operation near Atlantic City, Wyoming, into compliance with applicable regulations contained in the Wyoming State Implementation Plan (SIP). Because of the Administrator's approval, compliance by U.S. Steel Corporation, Western Ore Operation, with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: November 30, 1979.

ADDRESSES: A copy of the Delayed compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION: Cay white, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: On May 7, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 26768, a notice proposing approval of a delayed compliance order issued by the State of Wyoming, Department of Environmental Quality, to U.S. Steel Corporation, Western Ore Operation. The notice asked for public comments by June 6, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to U.S. Steel Corporation, Western Ore Operation, is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places U.S. Steel on a schedule to bring its waste fan on lines #1 and #2 of the agglomerating process at the Western Ore Operation near Atlantic City, Wyoming, into compliance as expeditiously as practicable with Section 14(g) of the Wyoming Air Quality Standards and Regulations, a part of the federally-approved Wyoming State Implementation Plan. The Order also imposes construction of particulate matter air pollution control equipment and testing of the equipment so as to bring it into compliance with Section 14(g). If the conditions of the Order are met, it will permit U.S. Steel Corporation, Western Ore Operation, to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Company is unable to immediately comply with these regulations.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.551 to read as follows:

§ 65.551 EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
U.S. Steel, Western Ore Operation.	Near Atlantic City, Wyo.	A-79-9	Sec. 14(g)	May 7, 1979	July 1, 1979.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place U.S. Steel, Western Ore Operation, on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Wyoming State Implementation Plan.

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

Dated: November 19, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36878 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 81

[FRL 1367-7]

Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today revokes the nonattainment designation of the Tacoma, Washington, area for sulfur dioxide (SO_2) under Section 107 of the Clean Air Act. This action is taken because of uncertainty as to whether, or to what extent, the supplementary control system operated by the ASARCO smelter to limit SO_2 emissions is authorized under the Act.

DATE: November 30, 1979.

ADDRESS: Copies of the supporting documents are available for inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, 1200 Sixth Avenue M/S 629, Seattle, Washington 98101.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Room 2922, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: George C. Hofer, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue M/S 625, Seattle, Washington 98101, telephone: (206) 442-1125; (FTS) 399-1125.

SUPPLEMENTAL INFORMATION: Section 107(d) of the Clean Air Act, as amended in 1977, requires the Environmental Protection Agency (EPA) to promulgate lists identifying the attainment status of all states with respect to the national ambient air quality standards (NAAQS). EPA promulgated those lists on March 3, 1978 (43 FR 8962) and amended them, in part, on September 11, 1978 (43 FR 40412).

On March 3, 1978, EPA designated the Tacoma, Washington, area nonattainment for sulfur dioxide (SO_2) (43 FR 9043) and confirmed that designation on September 11, 1978 (43 FR 40420). EPA noted that SO_2 concentrations in the Tacoma area were influenced by the use of a supplementary control system (SCS) by the ASARCO smelter, and that because that SCS was unauthorized, the Tacoma area should be classified nonattainment.

In commenting on the designation, ASARCO objected that it was inappropriate to characterize its SCS as unauthorized. First, ASARCO noted that EPA has not yet provided any interpretation of the statutory test for determining whether an SCS is authorized. Second, ASARCO submitted technical support for its position that its SCS is, in fact, authorized under the Clean Air Act. EPA agrees that under the circumstances presented here, the absence of regulations interpreting the statutory test makes it impossible to determine whether, or to what extent, the ASARCO SCS is authorized. (EPA will shortly promulgate such regulations.) Moreover, without expressing any view on the merits of ASARCO's argument that its SCS is authorized, EPA views ASARCO's arguments as non-frivolous and made in good faith.

On August 8, 1978 (44 FR 45970) EPA published a proposed rulemaking notice inviting public comment on the proposed revocation of the Tacoma area nonattainment designation for SO_2. No comments were received during the thirty (30) day comment period.

EPA is, therefore, today revoking the nonattainment designation for the Tacoma area. Pursuant to Section 107(d)(4) of the Clean Air Act the legal effect of this revocation will be to make the Tacoma area "unclassifiable" as defined by Section 107(d)(1)(D).

(Section 107(d), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7601(a))

Dated: November 23, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36900 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5740]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

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

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

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krim, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama	Madison	Huntsville, City of	010153-B	Nov. 1, 1979, suspension withdrawn.	May 24, 1974 and Sept. 17, 1976.
Do	Marion	Winfield, City of	010164-B	do	May 10, 1974 and May 28, 1976.
Connecticut	Litchfield	Bridgewater, Town of	090184-B	do	Dec. 6, 1974 and Feb. 20, 1976.
Do	Middlesex	East Haddam, Town of	090063-B	do	Aug. 23, 1974 and July 30, 1976.
Do	New Haven	Waterbury, City of	090091-B	do	Mar. 22, 1974 and June 7, 1977.
Georgia	Fulton and Cowetas	Palmetto, City of	130239-B	do	June 14, 1974.
Illinois	Jackson	Carbondale, City of	170296-B	do	May 3, 1974 and Mar. 4, 1977.
Do	St. Clair	East St. Louis, City of	170626-B	do	Nov. 16, 1973.
Do	Will	Frankfort, Village of	170701-B	do	Nov. 1, 1979.
Do	Cook	Lyons, Village of	170120-B	do	Mar. 15, 1974 and Feb. 20, 1976.
Do	Peoria	Peoria Heights, Village of	170537-B	do	Nov. 16, 1973.
Indiana	Lake	St. John, Town of	180141-B	do	Nov. 30, 1973 and April 9, 1976.
Iowa	Polk	Clive, City of	190488-B	do	Oct. 1, 1976 and May 31, 1977.
Do	do	West Des Moines, City of	190231-B	do	June 28, 1974 and Apr. 23, 1976.
Kansas	Leavenworth	Easton, City of	200188-A	do	July 9, 1976.
Do	Harvey	Hesston, City of	200132-A		June 28, 1974.
Do	Riley	Riley, City of	200303-B		Feb. 15, 1974 and Nov. 14, 1975.
Do	Leavenworth	Tonganoxie, City of	200192-B		June 7, 1974 and Apr. 30, 1976.
Michigan	Genesee	Flint, Township of	260395-B		June 10, 1977.
Do	Berrien	Lake, Township of	260036-B		June 28, 1974 and Oct. 1, 1976.
Do	Genesee	Swartz Creek, City of	260060-B	do	May 17, 1974 and June 4, 1976.
Minnesota	Sibley	Henderon, City of	270440-B	do	May 24, 1974 and Apr.16, 1976.
Do	Mille Lacs	Isle, City of	270288-B	do	June 7, 1974 and July 16, 1976.
Do	LeSueur	Kasota, City of	270247-B	do	June 7, 1974 and June 25, 1976.
Do	Wright	Monticello, City of	270541-B	do	May 24, 1974 and Mar. 26, 1976.
Do	Anoka	Ramsey, City of	270681-B	do	Apr. 21, 1978.
Do	Dakota	Vermillion, City of	270115-B	do	Aug. 9, 1974.
Do	Hennepin	Wayzata, City of	270188-B	do	June 21, 1974 and Mar. 19, 1976.
Mississippi	LeFlore	Unincorporated Areas	280101-B	do	Jan. 12, 1979.
Missouri	Jackson	Lake Lotawana, City of	290697-A	do	Nov. 19, 1976.
Nebraska	Dodge	Scribner, City of	310071-B	do	June 28, 1974 and Nov. 28, 1975.
Do	do	Snyder, Village of	310319-A	do	June 27, 1975 and Mar. 19, 1976.
North Carolina	Guilford	High Point, City of	370113-B	do	June 28, 1974 and Sept. 10, 1976.
Do	Davidson	Lexington, City of	370061-B	do	June 21, 1974 and Aug. 27, 1976.
Do	Rowan	Unincorporated Areas	370351-A	do	July 28, 1976.
Oklahoma	Cherokee	Tahlequah, City of	400037-B	do	June 14, 1974 and Apr. 16, 1976.
Pennsylvania	Allegheny	Liberty, Borough of	420048-B	do	Dec. 28, 1973 and May 14, 1976.
Do	Lackawanna	Moosic, Borough of	420533-B	do	Aug. 31, 1973 and Dec. 31, 1976.
Do	Washington	Peters, Township of	422152-A	do	Jan. 10, 1975.
Do	Dauphin	Reed, Township of	420383-B	do	Jan. 9, 1974 and Dec. 3, 1976.
Do	Montgomery	West Pottsgrove, Township of	421133-B	do	Sept. 20, 1974 and June 11, 1976.
Do	Delaware	Yeadon, Borough of	420442-B	do	June 28, 1974 and Aug. 27, 1976.
Texas	Dallas	Garland, City of	485471-B	do	Apr. 16, 1971.
Virginia	Faquier	Unincorporated Areas	510055-A	do	Dec. 13, 1974.
Do	Smyth	Marion, Town of	510223-A	do	Nov. 1, 1979.
Do	Scott	Unincorporated Areas	510142-B	do	Mar. 10, 1978.
Wisconsin	Sawyer	Hayward, City of	550410-B	do	June 28, 1974 and Oct. 17, 1975.
New Jersey	Burlington	Pemberton, Borough of	340111-B	Nov. 5, 1979, emergency; Nov. 5, 1979, regular.	Aug. 20, 1976 and Dec. 10, 1976.
Iowa	Grundy	Holland, City of	190404	Nov. 7, 1979, emergency	July 2, 1976.
Kansas	Allen	Humboldt, City of	200002-B	Dec. 24, 1974, emergency; Sept. 1, 1978, regular; Sept. 1, 1978, suspended; Nov. 7, 1979, reinstated.	Dec. 7, 1973 and Sept. 5, 1975.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Oregon	Washington	Durham, City of	410263	Nov. 7, 1979, emergency	Nov. 12, 1976.
Pennsylvania	Clearfield	Bradford, Township of	421516	do, emergency	Dec. 6, 1974.
Washington	Yakima	Tieton, Town of	530265	do, emergency	July 11, 1975.
Louisiana	Caddo Parish	Unincorporated Areas	220361	Nov. 9, 1979, emergency	Mar. 7, 1978.
Do	DeSoto Parish	do	220363	do, emergency	Jan. 10, 1978.
Do	St. Tammany	Folsom, Village of	220285	do, emergency	July 18, 1975.
Minnesota	Brown	Springfield, City of	270038-B	Apr. 23, 1979, emergency; July 2, 1979, regular; July 2, 1979; suspended; Nov. 9, 1979, reinstated.	Nov. 30, 1973 and Mar. 19, 1976.
Illinois	Brown	Unincorporated Areas	170989	Nov. 13, 1979, emergency.	Feb. 9, 1979.
Do	Fulton	do	170241	do, emergency	July 21, 1978 and June 1, 1979.
Pennsylvania	Schuylkill	Wayne, Township of	422027	do, emergency	Nov. 29, 1974.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: November 14, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36585 Filed 11-29-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5743]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet the statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

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

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

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 *List of Suspended communities.*

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Alabama	Escambia	East Brewton, City of	010073-B	June 25, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Nov. 23, 1973	Dec. 4, 1979.
Do	Marion	Unincorporated Areas	010161-A	Nov. 6, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Oct. 18, 1974 Mar. 17, 1978	do.
Do	Tuscaloosa	Northport, City of	010202-B	Sept. 5, 1979, emergency; Sept. 5, 1979, regular; Dec. 5, 1979, suspended.	Dec. 28, 1973 July 9, 1976	do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance - in community	Special flood hazard area identified	Date [1]
Arizona	Maricopa	Gila Bend, Town of	040043-B	May 16, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Jan. 23, 1974 Dec. 24, 1976	do.
Do	Pima	Oro Valley, Town of	040109-B	Feb. 12, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Apr. 11, 1975 July 16, 1976	do.
Do	Maricopa	Phoenix, City of	040051-B	Dec. 17, 1971, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 28, 1974 Sept. 12, 1975	do.
Arkansas	St. Francis	Forest City, City of	050187-B	May 5, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 15, 1974 Dec. 26, 1976	do.
Californiado.	Orange	San Clemente, City of	060230-B	July 9, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 14, 1974 November 14, 1975	do.
Do	Orange	Villa Park, City of	060236-B	May 22, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 22, 1974 Oct. 31, 1975	do.
Connecticut	New Haven	Oxford, Town of	090150-B	July 1, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 28, 1974 Dec. 17, 1976	do.
Do	Fairfield,	Trumbull, Town of	090017-B	Jan. 15, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 28, 1974 Apr. 1, 1977	do.
Florida	Putnam	Interlachen, Town of	120391-A	July 24, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Dec. 3, 1976	do.
Do	Putnam	Pomona Park, Town of	120418-A	July 9, 1976, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 26, 1978	do.
Do	Seminole	Oviedo, City of	120293-B	Sept. 28, 1979, emergency; Sept. 28, 1979, regular; Dec. 4, 1979, suspended.	Jan. 23, 1974 Febr. 13, 1976	do.
Georgia	Whitfield	Dalton, City of	130194-B	Aug. 16, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Aug. 16, 1974 Aug. 20, 1976	do.
Idaho	Clearwater	Weippe, City of	160049-B	June 4, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 17, 1974 June 11, 1976	do.
Illinois	Cook	Bellwood, Village of	170061-B	Feb. 18, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 7, 1974 Apr. 23, 1976	do.
Do	Rock Island and Henry	Coal Valley, Village of	170585-C	Sept. 26, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 1, 1974 Dec. 20, 1974	do.
Do	Tazewell	East Peoria, City of	170649-B	May 27, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 21, 1974	do.
Do	Cook	Indian Head Park, Village of	170110-B	Mar. 31, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Apr. 5, 1975 Oct. 10, 1975	do.
Do	LaSalle	Mendota, City of	170403-B	Nov. 2, 1974, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Apr. 5, 1974	do.
Do	Livingston	Pontiac, City of	170426-B	Feb. 13, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Mar. 8, 1974, July 18, 1975	do.
Do	Cook and Will	Tinley, Village of	170169-B	July 25, 1974, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	May 17, 1974 Jan. 13, 1978	do.
Indiana	Madison	Anderson, City of	180150-B	Nov. 7, 1974, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Feb. 15, 1974, Jan. 30, 1976	do.
Do	Lake	Hobart, City of	180136-B	Feb. 14, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Apr. 12, 1974, June 18, 1976	do.
Do	....do	Lowell, Town of	180137-B	Jan. 31, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Dec. 28, 1973, Jan. 9, 1976	do.
Do	Morgan	Martinsville, City of	180177-B	Apr. 2, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Nov. 23, 1973	do.
Do	Switzerland	Patriot, town of	180309-A	May 5, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	July 8, 1977	do.
Do	....do	Vevay, Town of	180352-B	Apr. 1, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Feb. 1, 1975	do.
Kansas	Coffey	Burlington, City of	200063-C	May 1, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Dec. 28, 1973, Dec. 12, 1975	do.
Do	Marion	Marion, City of	200207-B	Oct. 3, 1973, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Feb. 1, 1974, Oct. 31, 1975	do.
Kentucky	Pike	Coal Run, Village of	210263-A	Apr. 14, 1977, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Jan. 10, 1975	do.
Louisiana	East Feliciana	Clinton, Town of	220249-A	June 3, 1976, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	July 18, 1975	do.
Maine	Piscataquis	Milo, Town of	230177-B	July 16, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Jan. 10, 1975, Jan. 28, 1977	do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Oxford	Porter, Town of	230338-A	Oct. 7, 1976, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Feb. 7, 1975	do.
Massachusetts	Hampshire	Southampton, Town of	250171-A	July 23, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	Mar. 4, 1977	do.
Michigan	Berrien	New Buffalo, City of	260038-B	Apr. 10, 1973, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	May 31, 1974, June 11, 1976	do.
Minnesota	Anoka	Centerville, City of	270008-B	Mar. 6, 1973, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	May 3, 1974, Jan. 3, 1975	do.
Do	Hennepin	Shorewood, City of	270185-B	Apr. 8, 1975, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	May 31, 1974, Mar. 19, 1976	do.
Do	Roseau	Warroad, City of	270415-B	July 3, 1974, emergency; Dec. 4, 1974, regular; Dec. 4, 1979, suspended.	May 24, 1974, Dec. 13, 1974	do.
Missouri	New Madrid	Portageville, City of	290259-B	May 17, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Jan. 9, 1974, Dec. 12, 1975	
Nebraska	Douglas	Bennington, Village of	310074-A	July 10, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Febr. 1, 1974	
Do	Johnson	Tecumseh, City of	310127-B	May 6, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Dec. 4, 1979	
Do	Dodge	Winslow, Village of	310410-A	Mar. 7, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Aug. 23, 1974	
New Jersey	Essex	Irvington, Town of	340184-B	Oct. 5, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Dec. 28, 1973, Sept. 26, 1975	
Do	Middlesex	Metuchen, Borough of	340266-A	Jan. 14, 1972, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	November 5, 1976	
Do	do	New Brunswick, City of	340270-B	Sept. 15, 1979, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	June 15, 1973, Mar. 19, 1976	
Do	do	South Amboy, City of	340277-B	Sept. 27, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 1, 1974, Dec. 12, 1975	
Do	Somerset	Watchung, Borough of	340447-B	Sept. 17, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 1, 1974, June 4, 1976	
New York	Westchester	Bedford, Town of	360903-C	May 25, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 31, 1974, July 9, 1976	
Do	Albany	Cohoes, City of	360006-B	May 25, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Oct. 5, 1973, June 11, 1976	do.
Do	Livingston	North Dansville, Town of	360388-B	Apr. 17, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Dec. 28, 1973, Apr. 23, 1976	do.
Do	Saratoga	Waterford, Town of	360734-B	July 26, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 29, 1974	do.
North Dakota	Cass	Hunter, City of	380181-A	Dec. 23, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 21, 1975	do.
Ohio	Lake	Madison, Village of	390316-B	Aug. 26, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 10, 1974	do.
Do	do	Willowick, City of	390324-B	Feb. 18, 1976, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Aug. 15, 1975	do.
Oklahoma	Muskogee	Haskell, Town of	400124-B	Aug. 7, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Apr. 12, 1974,	do. Apr. 23, 1976
Pennsylvania	Lebanon	Jonestown, Borough of	420572-B	Dec. 29, 1972, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 30, 1973, Nov. 12, 1976	do.
Do	do	Lebanon, City of	420573-A	Jan. 26, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Nov. 23, 1973	do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Cumberland	Lemoyne, Borough of	420361-B	May 22, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Jan. 14, 1977	do.
Do	Bucks	Middletown, Township of	420193-B	Oct. 6, 1972, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 31, 1974, Oct. 17, 1975	do.
Do	Cumberland	Monroe, Township of	420364-B	Feb. 25, 1972, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Nov. 28, 1973, Nov. 12, 1976	do.
Do	Schuylkill	Pine Grove, Borough of	420782-B	June 14, 1973, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Aug. 2, 1974, May 28, 1976	do.
Do	Northampton	Tatamy, Borough of	420731-B	Sept. 30, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Apr. 12, 1974, June 25, 1976	do.
Do	Lebanon	Union, Township of	421806-A	Oct. 10, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Dec. 13, 1974	do.
Tennessee	Sullivan	Kingsport, City of	470184-B	Oct. 15, 1974, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Mar. 8, 1974, Aug. 13, 1976	do.
Texas	Jackson	LaWard, City of	481074A	Mar. 23, 1977, emergency; Sept. 28, 1979, regular; Dec. 4, 1979, suspended.	May 7, 1976	do.
Do	Collins and Dallas	Richardson, City of	480184-B	Feb. 20, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 24, 1974, May 17, 1977	do.
Vermont	Windsor	Springfield, Town of	500154-B	June 16, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 22, 1974, Sept. 12, 1975	do.
Washington	Cowlitz	Kelso, City of	530033-B	July 28, 1972, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 15, 1974, June 4, 1976	do.
Do	Lewis	Morton, City of	530105-B	June 4, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	May 24, 1974, Feb. 6, 1976	do.
West Virginia	Jefferson	Charles Town, Town of	540066-B	Apr. 24, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended.	Feb. 1, 1974, Sept. 19, 1975	do.

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

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: November 19, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36586 Filed 11-29-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5742]

Notice of Communities With No Special Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by the 100-year flood. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as zone C. In a zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which a community has been participating the rate for a one-story 1–4 family dwelling is $.25 per $100 of coverage. Under the Regular Program, to which a community has been coverted, the equivalent rate is $.01 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium rate is $.05 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,00 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community name	Date of conversion to regular program
Louisiana	Rapides	Village of Woodworth	Oct. 25, 1979.

(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: November 16, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36846 Filed 11-29-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5741]

Notice of Communities with Minimal Flood Hazard Areas For the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Area.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Area.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood Insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.7 List of communities with minimal flood hazards areas.

State	County	Community name	Date of conversion to regular program
Oregon	Marion and Linn	City of Gates	Dec. 4, 1979.
Oregon	Clackamas	City of Happy Valley	Dec. 4, 1979.
Utah	Sevier	City of Aurora	Dec. 4, 1979.
Utah	Garfield	Town of Tropic	Dec. 4, 1979.
North Dakota	Griggs	City of Cooperstown	Dec. 11, 1979.
Oregon	Clackamas	City of Sandy	Dec. 11, 1979.
Illinois	Franklin	City of Benton	Dec. 14, 1979.
Michigan	Cass	Village of Vandalia	Dec. 14, 1979.
Ohio	Jefferson	Village of Bergholz	Dec. 14, 1979.
Ohio	Portage	Village of Windham	Dec. 14, 1979.
Pennsylvania	Dauphin	Borough of Gratz	Dec. 14, 1979.
Pennsylvania	Cumberland	Borough of Newville	Dec. 14, 1979.
Pennsylvania	Carbon	Borough of Summit Hill	Dec. 14, 1979.
Pennsylvania	Erie	Township of Wayne	Dec. 14, 1979.
Pennsylvania	Lebanon	Township of West Cornwall	Dec. 14, 1979.
Alabama	Baldwin	Town of Silverhill	Dec. 14, 1979.
Kentucky	Garrard	City of Lancaster	Dec. 14, 1979.
Kentucky	Anderson	City of Lawrenceburg	Dec. 14, 1979.
Idaho	Shoshone	City of Smelterville	Dec. 18, 1979.
Washington	Spokane	City of Deer Park	Dec. 26, 1979.

(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: November 16, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36847 Filed 11-29-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free (800) 424–9080), Room 5150, 451 Seventh Street, SW, Washington, D. C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Title 24, Chapter 10, § 1917.4(a) of the Code of Federal Regulations). An opportunity for the

community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60 (formerly 24 CFR Part 1910).

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Cotati (City), Sonoma County (Docket No. FI-5016).	Laguna De Santa Rosa Creek	Santa Rosa Avenue, 50 feet upstream from centerline	*94
			Commerce Avenue, 25 feet upstream from centerline	*98
			East Cotati Avenue, 75 feet upstream from centerline	*108
			Benson Lane, 25 feet upstream from centerline	*108
		Cotati Creek	1st Private Bridge, upstream from the confluence with Laguna De Santa Rosa Creek, 50 feet upstream from centerline.	*108
			(Old) Redwood Highway, 40 feet upstream from centerline	*111
			Valparaiso Avenue, 25 feet upstream from centerline	*118
			Cypress Avenue, 50 feet upstream from centerline	*121
			Water Avenue, 75 feet upstream from centerline	*133
Maps are available at: City Hall, Cotati, California.				
Send comments to: Honorable Robert Davis, Mayor, City of Cotati, P.O. Box 428, Cotati, California 94928.				
California	Riverside County (Unincorporated) FI-5014.	Bautista Creek	Cedar Avenue, 40 feet upstream of centerline	*1678
			Olive Avenue extended, approximately 60 feet downstream of centerline	*1710
			Florida Avenue, 40 feet downstream of centerline	*1753
		Bear Creek	Washington Street, 50 feet upstream of centerline	*40
			Calle Tampico, 100 feet upstream of centerline	*49
			Avenida Obreson, 10 feet upstream of centerline	*59
			Calle Sonora extended, 20 feet upstream of centerline	*110
		Bly Channel	Van Buren Boulevard, 100 feet downstream of centerline	*701
			Van Buren Boulevard, 30 feet upstream of centerline	*706
			Union Pacific Railroad, 40 feet upstream of centerline	*710
			Jurupa Road, 10 feet upstream of centerline	*715
			Felspar Street, 150 feet upstream of centerline	*730
			Mission Boulevard, 70 feet upstream of centerline	*739
			Hastings Boulevard, 50 feet upstream of centerline	*747
		Calimesa Channel	Interstate Highway 10, 40 feet upstream of centerline	*2373
			Calimesa Boulevard, 60 feet upstream of centerline	*2394
			5th Street, 50 feet upstream of centerline	*2426
			4th Street, 40 feet upstream of centerline	*2450
			3rd Street, 30 feet upstream of centerline	*2481
			2nd Street, 90 feet downstream of centerline	*2520
			2nd Street, 90 feet upstream of centerline	*2527
			West County Line Road, 10 feet downstream of centerline	*2556
		Country Club Creek	Riverside Freeway, 10 feet upstream of centerline	*593
			Serfas Road, 10 feet upstream of centerline	*623
			Mountain View Drive, 80 feet downstream of centerline	*626
			Mountain View Drive, 10 feet upstream of centerline	*631
			Paseo Grande, 40 feet upstream of centerline	*712
		Country Club Creek North Tributary.	Confluence with Country Club Creek, 40 feet upstream of confluence point.	*623
			Paseo Grande, 50 feet downstream of centerline	*700
			Paseo Grande, 20 feet upstream of centerline	*704
		Day Creek	Lucretia Avenue, 120 feet upstream of centerline	*634
			64th Street, 20 feet upstream of centerline	*643
			Limonite Avenue, 50 feet upstream of centerline	*655
		East Cathedral Channel	H Street extended, 10 feet upstream of centerline	*360
			Grandview Avenue extended approximately 320 feet upstream of centerline.	*500
			Foothill Drive extended approximately 5 feet downstream of centerline	*681
		Edgemont B North Fork	Atchison, Topeka, and Santa Fe Railroad, 80 feet upstream of centerline.	*1520
			Edgemont Street, 140 feet upstream of centerline	*1531
			Dracaea Avenue, 60 feet upstream of centerline	*1538
			Eucalyptus Avenue, 40 feet upstream of centerline	*1549
		El Cerrito Channel	Minnesota Avenue, 20 feet upstream of centerline	*790
			Quebec Avenue, 30 feet upstream of centerline	*846
			Ontario Avenue, 15 feet upstream of centerline	*860
			Marilyn Drive extended, 9 feet upstream of centerline	*871
			Kathy Way extended, 30 feet upstream of centerline	*889
			Corona Freeway, 20 feet upstream of centerline	*942
		Garden Air Golf Course Wash	Interstate Highway 10, 40 feet upstream of centerline	*2347
			3rd Street, 30 feet upstream of centerline	*2395
			Bryant Street extended approximately 400 feet upstream of centerline	*2570
		Highland Springs Channel	East 8th Street, 90 feet upstream of centerline	*2601
			East 8th Street, 1580 feet upstream of centerline	*2625

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Kalmia Street Wash	Ivy Street, 20 feet upstream of centerline	*1085
			2nd Avenue, 130 feet upstream of centerline	*1089
			Washington Avenue, 70 feet upstream of centerline	*1098
			Adams Avenue, 50 feet upstream of centerline	*1112
			Jefferson Avenue, 40 feet upstream of centerline	*1127
		Lakeland Village Channel	Grand Avenue, 35 feet upstream of centerline	*1285
			Ralley Avenue, 5 feet upstream of centerline	*1293
			Southerland Avenue, 30 feet upstream of centerline	*1303
			Brightman Avenue, 10 feet upstream of centerline	*1311
			MacKay Avenue, 10 feet upstream of centerline	*1321
			Borrick Avenue, 20 feet upstream of centerline	*1327
			Hayes Avenue, 10 feet upstream of centerline	*1337
		Marshall Creek	14th Street, 70 feet downstream of centerline	*2595
			14th Street, 20 feet upstream of centerline	*2609
		Murrieta Creek at Murrieta	Washington Avenue, 10 feet upstream of centerline	*1061
			Ivy Street, 10 feet upstream of centerline	*1085
			Kalmia Street, 200 feet upstream of centerline	*1094
			Tenaja Road, 120 feet upstream of centerline	*1107
		Murrieta Creek at Temecula	First Street, 200 feet upstream of centerline	*1001
			Main Street, 320 feet upstream of centerline	*1005
			Rancho California Road, 10 feet upstream of centerline	*1009
		North Cathedral Channel	Date Palm Road, 100 feet upstream of centerline	*288
			Cathedral Canyon Drive, 100 feet upstream of centerline	*292
		Park Hill Drain	Menlo Avenue, 130 feet upstream of centerline	*1605
			Girard Street, 80 feet upstream of centerline	*1620
			Yale Street, 10 feet upstream of centerline	*1634
		Pigeon Pass Channel	Fir Avenue 20 feet upstream of centerline	*618
			Sunnymead Boulevard, 105 feet upstream of centerline	*631
			U.S. Highway 60, 220 feet upstream of centerline	*643
		Sunnymead Storm Channel	Cottonwood Avenue, 75 feet upstream of centerline	*585
			Dracaea Avenue, 80 feet upstream of centerline	*594
			Indian Street, 10 feet upstream of centerline	*602
			Myers Avenue, 140 feet upstream of centerline	*610
			Fir Avenue, 45 feet upstream of centerline	*619
			Sunnymead Boulevard, 10 feet upstream of centerline	*653
			U.S. Highway 60, 10 feet upstream of centerline	*668
			Perris Boulevard, 15 feet upstream of centerline	*681
			Ironwood Avenue, 60 feet downstream of centerline	*762
			Ironwood Avenue, 20 feet upstream of centerline	*772
			Kitching Lane, 40 feet upstream of centerline	*829
		Sunnyslope Channel	Riverview Drive, 100 feet upstream of centerline	*779
			Limonite Avenue, 50 feet upstream of centerline	*793
			Pacific Avenue, 30 feet upstream of centerline	*802
			Rustic Lane, 50 feet upstream of centerline	*822
			Mission Boulevard, 40 feet upstream of centerline	*836
		Pyrite Channel	Galena Street, 10 feet upstream of centerline	*772
			Pyrite Avenue, 20 feet upstream of centerline	*786
			Mission Boulevard, 20 feet upstream of centerline	*819
			State Highway 60, 70 feet downstream of centerline	*843
		Reche Canyon	20 feet upstream of County Line	*1330
			Unnamed Road, 2080 feet upstream of County Line, 50 feet upstream of centerline.	*1380
			Unnamed Road, 4020 feet upstream of County Line, 30 feet upstream of centerline feet upstream of centerline.	*1430
		Salt Creek	Murrieta Road, 800 feet upstream of centerline	*1413
			Warren Road, 130 feet upstream of centerline	*1503
			Harrison Avenue, 10 feet upstream of centerline	*1507
			Fisher Street, 10 feet upstream of centerline	*1510
		Santa Ana River	River Road, 100 feet upstream of centerline	*549
			Hamner Avenue, 90 feet upstream of centerline	*592
			Van Buren Boulevard, 80 feet upstream of centerline	*698
			Union Pacific Railroad, 180 feet upstream of centerline	*730
			Mission Boulevard, 180 feet upstream of centerline	*785
			State Highway 60, 200 feet upstream of centerline	*806
			Market Street, 100 feet upstream of centerline	*812
		San Sevaine Channel	Dodd Street, 10 feet upstream of centerline	*655
			Bain Street, 30 feet upstream of centerline	*686
			Jurupa Road, 60 feet upstream of centerline	*701
			Galena Street, 10 feet upstream of centerline	*730
			Van Buren Boulevard, 10 feet upstream of centerline	*746
		Smith Creek	First crossing of the Banning-Idyllwild Panoramic Highway, 50 feet upstream of centerline.	*2205
		Spring Brook	Orange Street, 10 feet upstream of centerline	*840
			Riverside Freeway, 140 feet downstream of centerline	*872
		Sun City Channel A-A	Ridgemoor Road, 10 feet upstream of centerline	*1413
			Chambers Avenue, 50 feet downstream of centerline	*1417
		Sun City Channel H-H	Encanto Drive, 35 feet upstream of centerline	*1432
		Temecula Creek	Escondido Freeway, 200 feet upstream of centerline	*989
			Pala Road, 80 feet upstream of centerline	*1000

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Temescal Wash	El Sobrante Avenue, 250 feet upstream of centerline	*630
			Compton Avenue, 10 feet upstream of centerline	*640
			Magnolia Avenue, 40 feet upstream of centerline	*649
		West Cathedral Channel	State Highway 111, 30 feet upstream of centerline	*306
			Terrace Road, 45 feet upstream of centerline	*479
			Grandview Avenue, extended 150 feet upstream of centerline	*595
			Foothill Drive, extended 50 feet upstream of centerline	*735
		West San Sevaine Creek	60th Street, 10 feet upstream of centerline	*659
			58th Street, 60 feet upstream of centerline	*669
			56th Street, 10 feet upstream of centerline	*677
			54th Street, 10 feet upstream of centerline	*690
			Jurupa Road, 10 feet upstream of centerline	*698
			Bain Street, 40 feet upstream of centerline	*705
		1001 Ranch Drain	Limonite Avenue, 10 feet upstream of centerline	*800
			Lakeside Drive, 20 feet upstream of centerline	*848
			Live Oak Drive, 20 feet upstream of centerline	*900
			Ironstone Drive, 110 feet upstream of centerline	*930
		1001 Ranch Drain West Tributary145Lakeside Drive, 50 feet downstream of centerline.		*831
			Lakeside Drive, 10 feet upstream of centerline	*842
		Blind Canyon Channel	Desert Hot Springs Corporate Limits	*1487
			525 feet upstream of Desert Hot Springs corporate Limits	*1520
		Desert Hot Springs Channel	Cholla Drive, 30 feet upstream of centerline	*1135
			West Drive, 25 feet downstream of centerline	*1163
	Maps are available at: County Department of Building Safety, 4080 Lemon Street, Riverside, California.			
	Send comments to: Mr. Robert Fitch, County Administrator, Riverside County, County Administrative Center, 4080 Lemon Street, Riverside, California 92501.			
California	Santa Paula (City), Ventura County FI-5015.	Santa Clara River	Downstream Corporate Limits	*225
			Palm Avenue Extension at centerline	*238
			8th Street Extension, 75 feet upstream from centerline	*244
		Fagan Canyon	Santa Paula Street, 25 feet upstream from centerline	*288
			Upstream Corporate Limits	*328
		Santa Paula Creek	Intersection of Harvard Boulevard and Palm Avenue	*243
			Intersection of Harvard Boulevard and 12th Street	*269
			Intersection of Ojai Road and Orchard Street	*342
			Intersection of Ojai Road and Say Road	*402
			Intersection of Mariposa Drive and Birch Street	*478
		Shallow Flooding	Intersection of Steckel Drive and Main Street	#1
			Intersection of Santa Barbara Street and 11th Street	#2
			Intersection of Ojai Road and Saticoy Street	#3
	Maps are available at: City Hall, 970 Ventura Avenue, Santa Paula, California.			
	Send comments to: Honorable Lef Maland, Mayor, City of Santa Paula, P.O. Box 569, Santa Paula, California 93060.			
Florida	Orchid (Town), Indian River County FI-5341.	Indian River	North State Route 510	*7
			South of State Route 510	*6
	Maps are available at: Town Hall, 1 Michael Creek Drive, Vero Beach, Florida.			
	Send comments to: Honorable George Lier, Mayor, Town or Orchid, Town Hall, 1 Michael Creek Drive, Vero Beach, Florida 32960.			
New Jersey	Bergen (County), Garfield (City) (Docket No. FI-2376).	Passaic River	Passaic Street at centerline	*19
			Monroe Street, 50 feet upstream from centerline	*20
			Outwater Lane at centerline	*21
			Dundee Dam, 50 feet upstream from centerline	*33
		Saddle River	Midland Avenue at centerline	*19
			Marcellus Place at centerline	*19
		Schroeder's Brook	Confluence with Passaic River	*19
			Conrail, 75 feet upstream from centerline	*24
			Belmont Avenue at centerline	*33
			Outwater Lane at centerline	*41
	Maps available at: City Hall, Outwater Lane, Garfield, New Jersey 07026.			
	Send comments to: Honorable Frank W. Calandriello, Mayor, City of Garfield, City Hall, Outwater Lane, Garfield, New Jersey 07026.			
New York	Albany, City Albany County (Docket No. FI-5426).	Hudson River	Downstream Corporate Limits	*20
			Dunn Memorial Bridge	*21
			Albany Tidal Gage	*21
			Amtra Railroad	*21
			Interstate 90	*22
		Normans Kill	Downstream limit of detailed study	*110
			Upstream Corporate Limits	*115
	Maps are available at: the City Planning Department, City Hall, Albany, New York.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Macungie, Borough Lehigh County (Docket No. FI-5354).	Swabia Creek	Downstream Corporate Limits	*362
			Confluence of Mountain Creek	*367
			Downstream State Route 100	*373
			Upstream State Route 100	*376
			Downstream Conrail Bridge	*376
			Upstream Conrail Bridge	*377
			Upstream Corporate Limits	*378

Maps are available at the Borough Hall, Church Street, Macungie, Pennsylvania.

(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: November 2, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36577 Filed 11-29-79; 8:45 am]

BILLING CODE 6718-03-M

41 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FIA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to 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).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii Call Toll Free (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection 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)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
Alabama	Town of Collinsville, De Kalb County (FI-5643).	Big Wills Creek	Just upstream of Alabama Highway 68	*675
			Just downstream of Copeland Bridge	*679
		Little Wills Creek	Just upstream of County Road 51	*679
			Just upstream of Broad Street	*716
		Little Wills Creek Tributary	Approximately 100 feet upstream of Reed Street	*723

Maps available at City Clerk's Office, City Hall, Collinsville, Alabama 35961.

Alabama	City of Talladega, Talladega County (FI-5695).	Talladega Creek	Just downstream of Louisville and Nashville Railroad	*506
		Isbell Branch	Approximately 60 feet upstream of Bemiston Avenue	*515
			Approximately 90 feet upstream of East South Street	*542
			Just downstream of North West Street	*546
			Approximately 65 feet upstream of North East Street	*551
			Approximately 70 feet downstream of 15th Street extended	*566
		Shady Lane Creek	Just upstream of Shady Lane Circle	*574
			Approximately 110 feet downstream of Allison Mill Road	*590
			Just downstream of Hilldale Drive	*633
		Oak Hill Creek	Approximately 80 feet downstream of Maintenance Dept. Road	*544
			Approximately 50 feet upstream of South Court Street	*559
			Approximately 70 feet upstream of Cherry Street	*576
		Adams Creek	Just upstream of Jackson Street	*555
			Approximately 50 feet upstream of Howard Street	*556
		Brecon Creek	Approximately 50 feet upstream of Broome Street	*556
			Just upstream of Intersection of 19th Street and Jemison Street	*564
			Approximately 100 feet downstream of Dumas Avenue	*570
		Johnson Creek	Approximately 200 feet upstream of Coosa Street	*572
			Approximately 60 feet downstream of Morgan Street	*579

Final Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
		Shocco Creek	Just upstream of Southern Railroad Bridge	*549
			Old Shocco Road	*571
Maps available at: Building Inspector's Office, City Hall, Talladega, Alabama 35160.				
Alabama	Town of Valleyhead, De Kalb County (FI-5646).	Big Wills Creek	Just upstream of City Park Bridge	*993
			Just downstream of the Southern Railway	*1,009
			Just upstream of Southern Railway	*1,015
			Just downstream of School Street	*1,021
			Just downstream of southernmost crossing of Highway 117	*1,036
		Valley Head Branch	Just upstream of Southern Railroad	*1,016
			Just upstream of Private Drive	*1,030
Maps available at: Town Clerk's Office, City Hall, Valleyhead, Alabama 35959.				
Arkansas	City of Brookland, Craighead County (FI-5657).	Tributary to Maple Slough Ditch	Just upstream of St. Louis Southwestern Railroad Bridge	*260
			Approximately 200 feet upstream of State Highway No. 1 Bridge	*261
Maps available at: Community Building and Fire Sattion, Bemis Street, Brookland, Arkansas 72417.				
Arkansas	City of Hoxie, Lawrence County (FI-5667).	Turkey Creek	Harding Street	*265
			Highway 63 East Bound	*264
Maps available at: City Clerk's Office, City Hall, 400 S.W. Hartigan, Hoxie, Arkansas 73233.				
California	Fort Jones (Town), Siskiyou County (FI-5035).	Moffett Creek	Diggles Street, 100 feet upstream from centerline	*2,731
			Butte Street, 50 feet upstream from centerline	*2,737
Maps are available at: City Clerk's Office, City Hall, East Street, Fort Jones, California 96032.				
Send comments to: Honorable Mary Berry, Mayor, Town of Fort Jones, P.O. Box 40, Fort Jones, California 96032.				
California	Lynwood (City), Los Angeles County (Docket No. FI-5201).	Shallow Ponding	Intersection of Wright Road and Louise Avenue	*81
			Intersection of Century Boulevard and Louise Avenue	*81
		Shallow Ponding	Intersection of Louise Avenue and Cortland Street	*78
Maps available at: City Hall, 11330 Bullis Road, Lynwood, California 90262.				
California	Palm Desert (City), Riverside County (Docket No. FI-5013).	Palm Valley Drain	Intersection of Rolling Knoll Drive and Quail Summit Drive	#1
			Intersection of Desert Flower Drive and Starburst Drive	#2
			Intersection of Thrush Road and Frontage Road	#1
			Intersection of Beaver Tail Street and Bursera Way	#1
			Intersection of State Highway 74 and Willow Street	#1
			Intersection of State Highway 74 and El Paseo	#1
			Intersection of Park View Drive and Monterey Avenue	#1
		Deep Canyon Channel	Intersection of Haystack Road and Portola Avenue	#3
		Dead Indian Canyon	700 feet east of the intersection of Irontree Drive and Mariposa Drive	#3
		Dead Indian Canyon and Palm Desert Channel	Intersection of Mesa View Drive and Alamo Drive	#3
			Intersection of Little Bend Trail and Sun Corral Trail	#3
			Intersection of Minzah Way and Marrakesh Drive	#3
			Intersection of El Paseo and Sun Lodge Lane	#2
			Intersection of Portola Avenue and Desert Star Boulevard	#1
			Intersection of San Luis Rey Avenue and Allesandro Drive	#1
			Intersection of San Pascal Avenue and 44th Avenue	#1
Maps available at: City Hall, Palm Desert, California.				
California	Santa Fe Springs (City) Los Angeles County FI-5443	Flowline No. 1	Florence Avenue, 50 feet upstream from centerline	*118
		Ponding Area	200 feet northeast of intersection of North Fork Coyote Creek and Atchison Topeka and Santa Fe Railroad.	*84
		Ponding Area	100 feet northwest of intersection of Lakeland Road and Atchison Topeka and Santa Fe Railroad.	*141
		Ponding Area	100 feet northeast of intersection Lakeland Road and Atchison Topeka and Santa Fe Railroad.	*146
Maps are available at: City Hall, 11710 Telegraph Road, Santa Fe Springs, California.				
Send comments to: Honorable Armando Mora, Mayor, City of Santa Fe Springs, P.O. Box 2120, 11710 Telegraph Road, Santa Fe Springs, California 90670.				
Kentucky	City of Bromley, Kenton County (FI-5650).	Ohio River	Main Street (Extended)	*496
		Pleasant Run Creek	Just upstream of Elm Street	*496
			Moore Street (Extended)	*496
Maps available at: Office of the Chairman of the Board of Trustees, 226 Boone Street, Ludlow, Kentucky 41016.				
Kentucky	City of Paducah, McCracken County (FI-5571).	Ohio River	Just upstream of Jefferson Street	*338
		Cross Creek	Confluence with Island Creek	*330
			Just upstream of Ervin Cobb Drive	*340
			Just upstream of 25th Street	*341
		Island Creek	Just upstream of Fourth Street	*330
			Just downstream of Bridge Street	*330
		Crooked Creek	Just upstream of Buckner Lane	*372
			Just upstream of Pecan Drive	*384
Maps available at: Engineering Department, City Hall, 5th and Washington Street, Paducah, Kentucky 42001.				

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
Louisiana	Town of Kentwood, Tangipahoa Parish (FI-5651).	Button Creek	Just downstream of La Highway 1051	*206
			Just downstream of Interstate I-55 Culvert	*211
			Just upstream of Westmoreland Road	*227
		Tangipahoa River	Just downstream of LA Highway 38	*196
	Maps available at: City Clerk's Office, City Hall, Kentwood, Louisiana 70444.			
Louisiana	Town of New Roads, Pointe Coupee Parish (FI-5667).	Portage Canal	Just upstream of Corporate Limits	*26
			Just upstream of Wooden Bridge	*26
			Just downstream of Missouri Pacific Railroad	*26
	Maps available at: Town Hall, 237 West Main, New Roads, Louisiana 70760.			
Mississippi	City of Newton, Newton County (FI-5652).	Potterchitto Creek	Just upstream of Ford Avenue Extension	*382
		Potterchitto Creek Tributary 1	Just downstream of U.S. Highway 80	*379
		Stream One	Just upstream of Illinois Central Gulf Railroad	*384
			Just upstream of Third Avenue	*394
	Maps available at: City Clerk's Office, City Hall, Newton, Mississippi 39345.			
Mississippi	City of Petal, Forrest County (FI-5653).	Leaf River	Just upstream of River Avenue (Main Street)	*146
			Just upstream of Southern Railway	*150
		Greens Creek	Just downstream of Main Street	*160
			Just downstream of Chapell Hill Road	*171
		Unnamed Tributary	Just upstream of George Avenue	*148
			Approximately 100 feet upstream of 8th Avenue	*153
	Maps available at: City Clerk's Office, Petal, Mississippi 39465.			
Mississippi	Town of Union, Newton County (FI-5654).	Chunky Creek	125 feet downstream of Main Street	*472
			At Airport Road	*488
		Chunky Creek Tributary 1	At Front Street	*470
			Just upstream of State Route 492	*481
		Chunky Creek Tributary 2	90 Feet upstream of Illinois Central Gulf Railroad Spur Track	*481
	Maps available at: City Clerk's Office, City Hall, Union, Mississippi 39365.			
Mississippi	City of Yazoo City, Yazoo County (FI-5655).	Willis Creek	At State Highway No. 3	*102
			Approximately 400 feet upstream of Field Road	*104
			Approximately 70 feet upstream of U.S. Highway 49E	*127
		Fifteenth Street Ditch	At confluence with City Ditch	*99
			At Smith Street	*100
		Storm Drain Ditch At Ninth Street.	At Champlin Avenue	*99
			At Prentiss Street	*100
			Approximately 200 feet upstream of Lamar Avenue	*102
		Lintonia Avenue Canal	At confluence with City Ditch	*99
			At Water Street	*109
			Just downstream of Calhoun Avenue	*111
			Just upstream of Grand Avenue	*115
			Just upstream of Jackson Avenue	*123
			Approximately 200 feet upstream of Webster Avenue	*128
		Town Creek	At Water Street	*98
			At Washington Street (and Leake Street)	*117
			Just upstream of Monroe Street	*127
			Approximately 110 feet upstream of confluence of Town Creek Lateral.	*136
		Town Creek Lateral	Approximately 90 feet upstream of confluence with Town Creek	*142
		City Ditch	Just upstream of Broadway Street	*98
			Just upstream of Champlin Avenue	*99
			At Fifteenth Street	*99
	Maps available at: Mayor's Office, City Hall, Yazoo City, Mississippi 39194.			
Missouri	City of Jefferson City, Cole and Callaway Counties (Docket No. FI-5619).	Missouri River	Upstream corporate limit	*560
			Confluence with Wears Creek	*556
			Downstream corporate limit	*552
		Moreau River	Just upstream of State Highway B	*568
			Downsteam corporate limit	*568
		East Branch Wears Creek	50 feet upstream of Lafayette Street	*579
			40 feet downstream of Lafayette Street	*578
			100 feet upstream of Dunklin Street	*576
			50 feet downstream of Elm Street	*570
			Just upstream of the Whitton Expressway near Monroe Street	*568
			Just upstream of Jefferson Street	*563
			Just downstream of Jefferson Street	*560
			At confluence with Wears Creek	*560
		North Branch Wears Creek	650 feet upstream of Jaycee Drive	*615
			Just downstream of Jaycee Drive	*619
			100 feet downstream of Jaycee Drive	*614
			1,500 feet upstream of Dix Road	*582

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
			60 feet upstream of Dix Road	*580
			230 feet downstream of Dix Road	*574
			Just upstream of Whitten Expressway crossing nearest to Dix Road	*565
			350 feet upstream of U.S. Highway 54	*563
			800 feet upstream of confluence with Wears Creek	*559
			At confluence with Wears Creek	*559
		Wears Creek	At upstream corporate limit	*583
			2,150 feet upstream of Southwest Boulevard	*573
			Just upstream of Southwest Boulevard	*572
			1,350 feet downstream of Southwest Boulevard at Access Road	*566
			1,400 feet downstream of Southwest Boulevard at Access Road	*562
			Just downstream of U.S. Highway 54	*561
			250 feet upstream of Main Street	*558
			Just downstream of Main Street	*556
		Grays Creek Tributary	About 0.9 mile upstream of the confluence with Grays Creek (about 900 feet downstream Belair Drive).	*562
			At confluence with Grays Creek	*560
Maps available at: City Hall, Jefferson City, Missouri 65101.				
Montana	Cascade County (Docket No. FI-5417).	Missouri River (North of Great Falls).	Black Eagle Dam, 100 feet upstream of centerline	*3306
			10th Stret north, 20 feet upstream of centerline	*3310
		Missouri River (South of Great Falls).	U.S. Highway 89 Bypass, 100 feet upstream of centerline	*3320
			Limit of Detailed Study upstream from U.S. Highway 89 Bypass at centerline.	*3326
		Missouri River (Near Ulm)	Most downstream Limit Detailed Study at centerline	*3332
			Most upstream Limit Detailed Study at centerline	*3334
		Missouri River (Near Hardy)	Most downstream Limit Detailed Study at centerline	*3364
			Interstate Highway 15—50 feet upstream of centerline	*3394
			U.S. Highway 91—100 feet upstream of centerline	*3407
			Interstate Highway 15 (second crossing)—50 feet upstream from centerline.	*3425
		Sun River (Near Great Falls)	Burlington Northern Railroad—50 feet upstream from centerline	*3322
		Sun River (Near Vaugh)	Central Avenue—80 feet upstream from centerline	*3329
			Manchester Road Bridge—50 feet upstream from centerline	*3338
			Vaugh-Vim County Road—100 feet upstream from centerline	*3353
			County Highway 200 Bridge—100 feet upstream from centerline	*3413
			Bridge 323A on Road to Brown—100 feet upstream from centerline	*3440
			Sand Coulee Creek Road Culvert—100 feet upstream from centerline.	*3452
			Confluence with Cottonwood Creek at centerline	*3470
		Sand Coulee Creek (North Side Railroad).	Bridge on Burlington Northern Railroad in Gibson Flats—150 feet downstream from centerline.	*3348
			50 feet upstream from centerline	*3350
			Reinforced Concrete Pipe under Gibson Flats and Road—50 feet upstream from centerline.	*3357
		Sand Coulee Fork	Burlington Northern Railroad at centerline	*3425
			Blaine Street—30 feet upstream from centerline	*3428
			San Coulee Road at centerline	*3448
			Bridge 326 between highway and Frontage Road 40 feet downstream from centerline.	*3492
			70 feet upstream from centerline	*3495
			Bridge 327 between Highway and Frontage Road 100—feet downstream from centerline.	*3506
		Cottonwood Creek	Bridge 527 on Franchman Hill Road—100 feet downstream from centerline.	*3470
		Sun River (Near Simms)	Most downstream Limit of Detailed Study at centerline	*3,546
			Simms Asheulot Road Bridge—100 feet upstream of centerline	*3,564
		Sun River Overflow Area (Near Vaugh).	End of Overflow Area at centerline	*3,339
			Beginning of Overflow Area at centerline	*3,349
		Bolt Creek	Most downstream Corporate Limits at centerline	*3,499
			Armington Bridge at centerline	*3,558
		Sand Coulee Creek	Bridge 288 on Federal Aid and Secondary Highway 459-50 feet upstream from centerline.	*3,331
			Bridge 310 County Road-40 feet upstream from centerline	*3,337
		Sand Coulee Creek (South Side of Railroad).	Bridge 311 Fields Road-90 feet upstream from centerline	*3,346
			Burlington Northern Railroad—70 feet upstream from centerline	*3,358
		Sand Coulee Creek	Road—100 feet upstream from centerline	*3,368
			Federal and Secondary Highway 227-70 feet downstream from centerline.	*3,387
			100 feet upstream from centerline	*3,388
			Bridge 321A on County Road—50 feet upstream from centerline	*3,397
			Blaine Street (Tracy)—100 feet downstream from centerline	*3,427
			150 feet upstream from centerline	*3,429
			Burlington Northern Railroad—50 feet upstream from centerline	*3,435
			100 feet upstream from centerline	*3,472
			Bridge 332 on Federal Aid Secondary Highway 226-100 feet upstream from centerline.	*3,522
			Bridge 333 on Griffin Coulee Road—100 feet downstream from centerline.	*3,527
			130 feet upstream from centerline	*3,531
			Federal Aid Secondary Highway 227 Culvert—20 feet upstream from centerline.	*3,579

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
			Bridge 334A Culvert to Dewey Avenue—60 feet upstream from centerline.	*3,579
			Reinforced Concrete Pipe under Cottonwood Coulee Road—60 feet upstream from centerline.	*3,604
		Tributary A	Unamed Road—40 feet upstream from centerline	*3,611
			Reinforced Concrete Pipe under Cottonwood Avenue—100 feet downstream from centerline.	*3,634
			30 feet upstream from centerline	*3,641
			Reinforced Concrete Pipe under Federal Aid-Secondary Highway 227-90 feet downstream from centerline.	*3,666
			At centerline	*3,674
		Gibson Flats	Gibson Flats Road—80 feet upstream from centerline	*3,351
			Divergence from Coulee Creek at centerline	*3,358
Maps are available at: Cascade County Courthouse Annex, Room 108, Great Falls, Montana.				
Send comments to Mr. Lawrence Fashbender, Commissioner, Cascade County, County Courthouse Annex, Great Falls, Montana 59401.				
Nebraska	Village of Terrytown, Scotts Bluff County (Docket No. FI-5574).	North Platte River	2,000 feet downstream of State Highway 71	*3,,874
			Downstream corporate limit at State Highway 71	*3,,875
Just upstream of Avenue I				*3,,880
			Upstream corporate limit	*3,881
Maps available at: City Hall, Terrytown, Nebraska 69341.				
New Hampshire	Bristol, Town, Grafton County (Docket No. FI-5425).	New Found River	South Main Street	*451
			State Route 104 (Pleasant Street)	*455
			Willow Street	*459
			Lake Street (Lower IPC Dam)	*479
Maps are available at: the Town Office, Bristol, New Hampshire.				
New Hampshire	Dover (City), Strafford County (FI-5061).	Cocheco River	Washington Street Footbridge 20 feet upstream from centerline	*10
			Washington Street 40 feet upstream from centerline	*12
			Walkway 40 feet upstream from centerline	*13
			Central Avenue 20 feet upstream from centerline	*44
			Chestnut Street 20 feet upstream from centerline	*44
			Boston and Maine Railroad (Spur) 20 feet upstream from centerline	*46
			Boston and Maine Railroad 20 feet upstream from centerline	*47
			Fourth Street 50 feet upstream from centerline	*47
			Whittier Street 20 feet downstream from centerline	*48
		Bellamy River	Old Durham Road 40 feet upstream from centerline	*55
			Bellamy Park Footbridge 30 feet upstream from centerline	*75
Maps are available at: City Planning Office, City Hall, Dover, New Hampshire.				
Send comments to: Honorable Henry Smith, Mayor, City of Dover, City Hall, Central Avenue, Dover, New Hampshire 03820.				
New Hampshire	Wilton (Town), Hillsborough (County) (Docket No. FI-5063).	Souhegan River	Pine Valley Mill Dam—75 feet upstream from centerline	*317
			Pine Valley Mill Dam—100 feet upstream from centerline	*320
			Mill Street—25 feet upstream from centerline	*345
			Abbott Dam—50 feet upstream from centerline	*357
			State Routes 101 and 31—25 feet upstream from centerline	*415
			Isaac Frye Highway 25 feet upstream from centerline	*455
			At Confluence with Russell Hill Brook	*513
		Stony Brook	Highland Street Bridge—15 feet upstream of centerline	*347
			At Confluence with Beaver Dam Brook	*418
			Boston and Maine Railroad Bridge—25 feet upstream from centerline	*428
			Forest Road Culvert (Downstream crossing)—20 feet upstream from centerline.	*448
			Gravel Pit Road Bridge—25 feet upstream from centerline	*483
			At Upstream Corporate Limits	*540
		Gambol Brook	Greenville Road (State Route 31)—25 feet upstream from centerline	*467
			Russell Hill Road—10 feet upstream from centerline	*521
		Mill Brook	At Breached and Abandoned Dam (950 feet upstream of confluence with Stony Brook)—10 feet upstream from centerline.	*457
			At Breached and Abandoned Dam (950 feet upstream of confluence with Stony Brook)—20 feet upstream from centerline.	*463
			Old Wilton Reservoir Dam—10 feet upstream from centerline	*599
			Old Wilton Reservoir Dam—10 feet upstream from centerline	*611
			Isaac Frye Highway Culvert—100 feet upstream from centerline	*651
			Frye Mill Road Bridge—10 feet upstream from centerline	*680
			Burton Highway Bridge (upstream crossing)—10 feet upstream from centerline.	*708
Maps available at: Town Office, Main Street, Wilton, New Hampshire.				
Send comments to: Mr. Charles McGettigan, Jr., Chairman, Board of Selectman, Town of Wilton, Town Office, P.O. Box 83, Main Street, Wilton, New Hampshire 03086.				
New York	Aurora, Village, Cayuga County (Docket No. FI-5596).	Paines Creek	Confluence with Cayuga Lake	*386
			State Route 90	*387
			Upstream Corporate Limits	*390

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
Maps are available on the Village Bulletin Board, Main Street, Aurora, New York.				
North Carolina	Town of Black Mountain, Buncombe County (FI-5658).	Swannanoa River	Just upstream of Blue Ridge Road	*2,306
			Just upstream of Southern Railway	*2,355
		Flat Creek	Just upstream of U.S. Highway 70	*2,364
			Just downstream of Cotton Avenue	*2,403
		Tomahawk Branch	Approximately 528 feet upstream of the confluence with Swannanoa River.	*2,287
			Just upstream of U.S. Highway 70	*2,314
		Camp Branch	Approximately 528 feet upstream of the confluence with Swannanoa River.	*2,323
			Just downstream of the confluence of Tributary to Camp Branch	*2,347
		Unnamed Tributary to Camp Branch.	Approximately 90 feet upstream of the confluence with camp Branch	*2,348
Maps available at: City Hall, 225 W. State Street, Black Mountain, North Carolina 29711.				
North Carolina	Princeville (Town), Edgecombe County (FI-5370).	Tar River	U.S. Highway 64 Bypass 50 feet* upstream from centerline	*43
			Seaboard Coast Line railroad—100 feet* upstream from centerline	*43
			U.S. Highway 64—100 feet* upstream from centerline	*43
Map Maps are available at: Townhall, Princeville, North Carolina.				
Send comments to: Honorable A. C. Bactehelor, Mayor, Town of Princeville, P.O. Box 1527, Tarboro, North Carolina 27886.				
North Carolina	Whitakers (Town), Edgecombe (County) (Docket No. FI-5430).	White Oak Swamp	Intersection of East Nash Street and Cutchin Street	#2
			Intersection of Watson Street and Porter Street	#2
			Intersection of Knight Street and King Street	#2
Maps available at: Town Hall, Whitakers, North Carolina.				
Send comments to: Honorable Hursel B. Johnson, Mayor, Town of Whitakers, Town Hall, P.O. Box 727, Whitakers, North Carolina 27891.				
North Dakota	Walhalla (City), Pembina County FI-5424.	Pembina River	Burlington Northern Railroad Bridge—200 feet upstream from centerline.	*948
			Federally Aided Secondary County Road No. 9 Bridge—150 feet upstream from centerline.	*948
			State Highway 32 Bridge—100 feet upstream from centerline	*954
Maps are available at: City Hall, Central Avenue, Walhalla, North Dakota.				
Send comments to: Honorable Ed Karell, Mayor, City of Walhalla, P.O. Box 38, Central Avenue, Walhalla, North Dakota 58282.				
Ohio	City of Upper Arlington, Franklin County (Docket No. FI-5576).	Scioto River	Just upstream of Conrail	*740
			Just upstream of Trabue Road	*743
			Just downstream of Julian Griggs Dam	*751
			Just upstream of Julian Griggs Dam	*769
			About 2.4 miles upstream of Fishinger Road	*772
Maps available at: City Hall, 3600 Tremont Avenue, Columbus, Ohio 43221.				
Oklahoma	Town of Porum, Muskogee County (FI-5577).	Porum Creek	Just upstream of Ute Avenue	*568
			Just downstream of Cherokee Avenue	*576
			Approximately 80 feet downstream of Seneca Avenue	*583
Maps available at: Office of Councilman Pulse, City Hall, P.O. Box 69, Porum, Oklahoma 74455.				
Oklahoma	City of Snyder, Kiowa County (FI-5657).	Tributary 1	Just downstream of "C" Street	*1,349
			Just upstream of U.S. Highway 183	*1,352
		Tributary 2	Just downstream of "C" Street	*1,355
			Just downstream of 13th Street	*1,357
Maps available at: City Hall, 721 E. Street, Synder, Oklahoma 73566.				
Oregon	Newport (City), Lincoln County FI-5396.	Big Creek	Oregon Coast Highway 101 Culvert (Inlet) upstream from centerline	*21
			Upstream Limit of Detailed Study at centerline	*27
		Pacific Ocean	At mouth of Little Creek	*27
			West of Park Drive	*34
			West of Beach Drive (Loop)	*28
			West of Intersection of Southwest Elizabeth Street and Fall Street	*32
			West of Intersection of Southwest Elizabeth Street and Government Street.	*29
		Yaquina Bay	Shoreline East of Southwest Bay Boulevard	*10
			Shoreline North of Intersection of Ferry Slip Road and Oregon State University Drive.	*9
			East of Ferry Slip Road	*9
		Big Creek	In vicinity between Oregon Coast Highway 101 and Northwest Oceanview Drive.	#2
		Pacific Ocean	Along Beach Drive (Loop)	#2
Maps are available at: City Hall, 810 S.W. Alder Street, Newport, Oregon 97365.				
Send comments to: Honorable Mona Oten, Mayor, City of Newport, City Hall, 810 S.W. Alder Street, Newport, Oregon 97365.				

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
Pennsylvania	Jessup, Borough, Lackawanna County (Docket No. FI-5599).	Lackawanna River	Confluence of Sterry Creek	*794
			Pa. Route 247	*800
			Confluence of Grassy Island Creek	*837
			River Street	*851
			Upstream Corporate Limits	*864
		Sterry Creek	Confluence with Lackawanna River	*794
			Delaware Hudson Railway Downstream	*796
			Delaware Hudson Railway Upstream	*810
			Downstream Corporate Limits (near Powder Mill Road)	*816
			Upstream Corporate Limits	*868
			Upstream Corporate Limits (cross section R) (near Conrail)	*903
		Grassy Island Creek	Confluence with Lackawanna River	*837
			Delaware Hudson Railway Downstream	*847
			Delaware Hudson Railway Upstream	*857
			Unpaved Road Downstream	*875
			Unpaved Road Upstream	*883
			Delaware Hudson Railway and Breaker Street (40' approximately) Downstream.	*886
			Delaware Hudson Railway and Breaker Street Upstream	*909
			Approximately 1,850 feet usptream of Delaware Hudson Railway and Breaker Street.	*958
	Maps are available at: the Borough Building, 2nd Street, Jessup, Pennsylvania.			
Pennsylvania	Mount Pleasant, Township, Columbia County (Docket No. FI-5600).	Fishing Creek	Corporate Limits (Downstream)	*497
			Legislative Route 239	*500
			Conrail (Upstream)	*519
			Legislative Route 19026	*535
			Corporate Limits (Upstream)	*556
		Little Fishing Creek	Legislative Route 239 (Upstream)	*501
			Covered Bridge No. 69 (Upstream)	*519
			Township Route 519 (Downstream)	*544
			Township Route 519 (Upstream)	*549
			Legislative Route 19058 (Upstream)	*556
			Pennsylvania State Route 42 (Upstream)	*574
			Conrail (Downstream)	*580
			Corporate Limits (Upstream)	*582
		Appleman's Run	Corporate Limits	*516
	Maps are available at: the Municipal Building, Bloomsburg, Pennsylvania.			
Pennsylvania	Nippenose, Township, Lycoming County (Docket No. FI-5601).	West Branch Susquehanna River.	Corporate Limits (Downstream)	*544
			Pennsylvania Route 44 (Upstream)	*551
			Corporate Limits (Upstream)	*554
		Antes Creek	Legislative Route 41088	*552
			Conrail (Downstream)	*552
			Conrail (Upstream)	*570
			Private Bridge	*617
			Corporate Limits (Upstream)	*624
	Maps are available at: The Nippenose Township Office, Antes Fort, Pennsylvania.			
Pennsylvania	Ransom, Township, Lackawanna County (Docket No. FI-5625).	Susquehanna River	Downstream Corporate Limits	*564
			Confluence of Gardner Creek	*568
			Upstream Corporate Limits	*572
		Gardner Creek	Upstream side of Conrail bridge	*571
			Upstream side of Main Street bridge	*574
			Upstream side of L.R. 35012 bridge	*661
	Maps are available at: The Ransom Town Hall, Clarks Summit, Pennsylvania.			
Pennsylvania	South Strabane, Township, Washington County (Docket No. FI-5602).	Little Chartiers Creek	Downstream 300 feet from 84 Drive	*993
			Downstream Roupe Road	*999
			Upstream Rankin Road	*1,014
			Upstream Roberts Road	*1,036
			Downstream U.S. Route 40	*1,070
		Tributary 4	Downstream 500 feet from Abandoned Railroad	*997
			Upstream 4,800 feet from Clokey Road	*1,011
			Upstream 8,000 feet from Clokey Road	*1,018
		Chartiers Creek	Downstream 200 feet LR 62092	*973
			Upstream Country Club Road	*984
			Upstream North Main Street Exit	*990
			Upstream 200 feet from Conrail	*999
	Maps are available at: The Township Building, 550 Washington Road, Washington, Pennsylvania.			

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevated in feet (NGVD).
Texas	City of Balcones Heights, Bexar County (FI-5659).	East Woodlawn Ditch	Just downstream of West Service Road of I-10 (or Frontage Road) at Exit of the South Culvert thru Interstate HWY I-10.	*800
			Just upstream of West Service Road of I-10 (or Frontage Road) at Exit of the North Culvert thru Interstate HWY I-10.	*828
	Maps are available at: City Secretary's Office, Balcones Heights City Hall, San Antonio, Texas 78201.			
Texas	City of Natalia, Medina County (FI-5661).	Chacon Creek	At U.S. Highway 81	*669
		Fort Ewell Creek	Just upstream of FM 471	*677
	Maps are available at: Office of the City Secretary, City Hall, Natalia, Texas 78059.			
Texas	City of Ovilla, Ellis County (FI-5682).	Red Oak Creek	100 feet down-street of FM 664	*607
			Just downstream of Water Street	*625
		Shiloh Branch	75 feet upstream of the confluence with Red Oak Creek	*609
			75 feet downstream of County Road	*635
	Maps available at City Hall, Ovilla, Texas 76065.			
Vermont	Isle La Motte, Town, Grand Isle County (Docket No. FI-5605).	Lake Champlain	Entire Shoreline	*102
	Maps are available at: The Town Office, Isle La Motte, Vermont.			
West Virginia	McMechen, City, Marshall County (Docket No. FI-5631).	Ohio River	Upstream Corporate Limits	*656
			Confluence of McMechens Run	*656
			Confluence of Koontz Run	*655
			Confluence of Jim Run	*655
			Downstream Corporate Limits	*655
	Maps are available at: The City Building, 47 Ninth Street, McMechen, West Virginia.			
Wisconsin	Unincorporated Areas of Columbia County (Docket No FI-5588).	Fox River	At Village of Pardeeville northeastern corporate limit	*808
			Just upstream of Haynes Road	*810
			Just downstream State Highway 33	*815
			2.45 miles upstream of State Highway 33	*819
		Crawfish River	At Eastern county boundary	*835
			Just upstream of Fall River-Columbia Road	*840
			Approximately 800 feet downstream of Hall Road	*844
			1.67 miles upstream of Hall Road	*848
		North Branch Crawfish River	At Village of Fall River corporate limit	*859
			Just downstream county highway, DG	*861
	Maps available at: Office of the County Clerk, Columbia County Courthouse, Box 177, Portage, Wisconsin 53901.			
Wisconsin	Village of River Hills, Milwaukee County (Docket No FI-5589).	Milwaukee River	Downstream corporate limits	*633
			Just downstream of Greentree Road	*634
			Just upstream of Greentree Road	*637
			1,260 feet upstream of West Good Hope Road	*641
			200 feet upstream of the confluence of Indian Creek	*645
			Just upstream of Most Northerly Golf Course Bridge	*648
			2,000 feet upstream of Range Line Road	*650
			2,370 feet upstream of west Brown Deer Road	*651
			Upstream corporate limits	*653
	Maps available at: Office of the Village Clerk, 7650 North Pheasant Lane, River Hills, Wisconsin 53217.			
Wisconsin	South Milwaukee (City), Milwaukee (County) (Docket No. FI-5415).	Oak Creek	Oak Creek Parkway (downstream crossing) (25 feet) upstream from centerline.	*588
			6th Avenue (25 feet) upstream from centerline	*602
			6th Avenue (100 feet) upstream from centerline	*617
			15th Avenue (downstream crossing) (10 feet) upstream from centerline.	*642
			Milwaukee Avenue (10 feet) upstream from centerline	*651
		Lake Michigan	200 feet southeast of intersection of Hawthorne Avenue and Park Drive.	*584
	Maps available at: City Hall, 2005 10th Avenue, South Milwaukee, Wisconsin. Send comments to: Honorable Chester Grobschmidt, Mayor, City of South Milwaukee, 2005 10th Avenue, South Milwaukee, Wisconsin 53172.			

(National Flood Insurance Act of 1968 (Title XIII of) November 28, 1968), as amended (42 U.S.C. 4001–4128 Administrator 44 FR 20963)

Issued: November 2, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-36578 Filed 11-29-79; 8:45 am]

BILLING CODE 4210-23-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1361-A]

Car Service; Substitution of Trailers for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1361-A.

SUMMARY: Authorizes the Atchison, Topeka and Santa Fe Railway Company (ATSF) to substitute trailers for boxcars for the transportation of grain.

DATE: Since an emergency no longer exists, Service Order 1361 is vacated effective 11:59 p.m., November 30, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

Decided: November 20, 1979.

Upon further consideration of Service Order No. 1361 (44 FR 17504 and 31982), and good cause appearing therefore:

It is ordered: § 1033.136 *substitution of trailers for boxcars,* Service Order No. 1361 is vacated effective 11:59 p.m., November 30, 1979.

(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 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. 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. John R. Michael not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36875 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1382-A]

Car Service; Consolidated Rail Corporation Authorized To Operate Over Tracks of Louisville and Nashville Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1382-A.

SUMMARY: Service Order No. 1382 authorized Consolidated Rail Corporation to operate over tracks of Louisville and Nashville Railroad between Terre Haute and Spring Hill, Indiana, in order to serve Chinook Mine at Riley, Indiana.

DATE: Since the emergency no longer exists, Service Order No. 1382 is vacated effective 11:59 p.m., November 21, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

Decided: November 20, 1979.

Upon further consideration of Service Order No. 1382 (44 FR 36184), and good cause appearing therefore:

It is ordered: § 1033.1382 *Consolidated Rail Corporation authorized to operate over tracks of Louisville and Nashville Railroad Company,* Service Order No. 1382 is vacated effective 11:59 p.m., November 21, 1979.

(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. John R. Michael not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36876 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. 1382-A]

Vacation of Order Authorizing Consolidated Rail Corp. to Operate Over Tracks of Louisville and Nashville Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1384-A.

SUMMARY: Authorizes the Chicago & Indiana Railroad Company to operate over tracks leased from the State of Indiana. D-OP35 Certificate of Designated Operator—was granted November 2, 1979, thus eliminating the need for Service Order No. 1384.

DATE: Since an emergency no longer exists, Service Order 1384 is vacated effective 11:59 p.m., November 19, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

Decided: November 20, 1979.

Upon further consideration of Service Order No. 1382 (44 F.R. 36184), and good cause appearing therefore:

It is ordered, that § 1033.1382, Service Order No. 1382, *Consolidated Rail Corporation Authorized to Operate over tracks of Louisville and Nashville Railroad Company* is vacated effective 11:59 p.m., November 21, 1979.

(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. John R. Michael not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36804 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 44, No. 232
Friday, November 30, 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

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program; Extension of Comment Period

AGENCY: Food and Nutrition Service, USDA.

ACTION: Extension of Comment Period for Proposed Rule.

SUMMARY: On October 5, 1979 (44 FR 57414) proposed rulemaking was published that would amended §§ 272.1(g) and 273.10(e) of Food Stamp Program regulations. A 45 day comment period was scheduled; However, due to the significance of this proposal, the Department is extending the comment period to a full 60-days.

DATE: Comments must, therefore, be received on or before December 17, 1979 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, 202–447–9075.

Dated: November 27, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-36962 Filed 11-29-79; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1135

[Docket No. AO-380-R01]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Reopening of Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopened hearing on proposed marketing agreement and order.

SUMMARY: A public hearing was held in Boise, Idaho, on December 5–8, 1978, to consider whether a new milk order should be established to regulate the handling of milk in an area tentatively designated as the Southwestern Idaho-Eastern Oregon marketing area. The order was proposed by cooperative associations representing a majority of the dairy farmers supplying the market. After analyzing the record of the hearing, the Department tentatively concluded that the hearing evidence did not provide a sufficient basis for establishing a new order. Interested parties were then provided an opportunity to submit comments on the tentative conclusions. Proponents of the new order indicated in their comments that there is additional evidence concerning the need for an order which they wish to make available. Accordingly, the hearing is being reopened to permit all interested parties an opportunity to present additional testimony concerning the need for an order and what provisions an order should contain.

DATE: Hearing date: January 8, 1980.

ADDRESS: Federal Building, U.S. Courthouse, 550 West Fort Street, Bosie, Idaho 83724.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued October 19, 1978, published October 24, 1978 (43 FR 49704).

Correction: Published October 27, 1978 (43 FR 50187).

Correction: Published November 13, 1978 (43 FR 52496).

Extension of time for filing briefs: Issued February 23, 1979; published February 28, 1979 (44 FR 11236).

Recommended decision: Issued August 13, 1979; published August 16, 1979 (4 FR 48128).

Extension of time for filing exceptions: Issued September 14, 1979; published September 19, 1979 (44 FR 54307).

A public hearing was held at Boise, Idaho, on December 5–8, 1978, pursuant to a notice of hearing issued October 19, 1978 (43 FR 49704) with respect to a proposed marketing agreement and order regulating the handling of milk in the tentatively designated Southwestern Idaho-Eastern Oregon marketing area.

Notice is hereby given, pursuant to the rules of practice for these proceedings (7 CFR Part 900), that the said hearing will be reopened at the Federal Building, U.S. Courthouse, 550 West Fort Street, Bosie, Idaho, beginning at 10 a.m., local time, on January 8, 1980.

The hearing is being reopened for the purpose of receiving additional evidence concerning the economic and marketing conditions that relate to any of the issues and proposals set forth in the original notice of hearing.

On the basis of the record of the initial hearing, the Department tentatively concluded that the hearing evidence did not provide a sufficient basis for establishing a new order for the proposed marketing area. The Department's findings and conclusions in this regard were set forth in its recommended decision that was issued on August 13, 1979 (44 FR 48128). In their exceptions to the Department's tentative conclusions, proponents indicated that there is additional evidence concerning the need for an order which they wish to make available. Accordingly, the hearing is being reopened to permit all interested parties an opportunity to present additional testimony concerning the need for an order and what provisions an order should contain.

Copies of this notice of reopened hearing may be obtained from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on November 27, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-36952 Filed 11-29-79; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct Material

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: NRC is considering adoption of new requirements for labeling the external surfaces of not only gas and aerosol detectors including smoke detectors, but also the point-of-sale packaging for these detectors. The

purposes of these new labeling requirements would be to: (1) inform prospective purchasers and other persons that the detectors contain radioactive material, and (2) identify the radioactive material and quantity of activity in each detector.

DATES: Comment period expires January 14, 1980.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposal and/or the supporting value/impact analysis to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Single copies of the value/impact analysis may be obtained on request from the contact listed below. Copies of the value/impact analysis and of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ralph J. Jones, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301–443–5946).

SUPPLEMENTARY INFORMATION: The proposed regulations would aply to "gas and aerosol detectors" [1] designed to protect life or property from fires and airborne hazards. This class includes smoke detectors. Smoke detectors containing small quantities of radioactive material, usually americium–241, are distributed extensively to homeowners and other users of the product. The user is exempt from regulatory requirements, while the manufacturer (or distributor of imported products) must have a specific license to distribute the product. One of the requirements for a specific licensee is the labeling or marking of the device such that the manufacturer and the radioactive material can be identified. The common practice for manufactures (or distributors) has been to place the label inside the detector cover. This practice has resulted in severe criticism of a regulatory program that does not require labeling of smoke detectors such that: (1) prospective purchasers may know, in advance of purchase, that the smoke detector contains radioactive material; and (2) any persons may know, by an external label, that the smoke detector contains radioactive material.

Proposed 10 CFR 32.26(b)(10) would require applicants for specific licenses to submit proposed methods of labeling the external surfaces of both the detector and the point-of-sale packaging, if the detector is packaged individually. Proposed 10 CFR 32.29(b)(1) would require each person licensed under 10 CFR 32.26 to provide each unit with a label containing: (1) the name of the radionuclide and the quantity of activity, (2) a statement that the device contains radioactive material, and (3) an identification of the manufacturer (or distributor). Proposed 10 CFR 32.29(b)(2) would require each person licensed under 10 CFR 32.26 provide point-of-sale package a label containing: (1) the name of the radionuclide and the quantity of activity, and (2) a statment that the detector contains radioactive material which presents no significant hazard to health if use in accordance with the instructions. The proposed regulations would not require any statement on the label on an external surface that the user return the detector to the manufacturer (or distributor) for disposal at the end of its useful life.

Licensees would be allowed to use currently approved labeling methods until 6 months after the effective date of the regulations.

Copies of the value/impact analysis supporting the rule are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Single copies of the value/impact analysis may be obtained on request from the Transportation and Product Standards Branch, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 32 is contemplated.

1. Paragraph 32.26(b)(10) is revised to read as follows:

§ 32.26 Gas and aerosol detectors containing byproduct material: requirements for license to manufacture, process, produce, or initially transfer.

* * * * *

(b) * * *

(10) The proposed methods of labeling or marking each unit and, if the unit is packaged individually, each point-of-sale package;

* * * * *

2. Paragraph 32.29(b) is revised to read as follows:

§ 32.29 Conditions of licenses issued under § 32.26: quality control, labeling, and reports of transfer.

* * * * *

(b) After July 14, 1980, provide each unit with:

(1) A durable, legible, readily visible label or marking on the external surface of the unit containing:

(i) The following statement: CONTAINS RADIOACTIVE MATERIAL,

(ii) The name of the radionuclide and quantity of activity,

(iii) An identification of the manufacturer, or initial transferor of the product.

(2) A legible, readily visible label or marking on the external surface of the point-of-sale package, if the unit is packaged individually, containing:

(i) The following statement: THIS DETECTOR CONTAINS RADIOACTIVE MATERIAL WHICH PRESENTS NO SIGNIFICANT HAZARD TO HEALTH IF USED IN ACCORDANCE WITH THE INSTRUCTIONS,

(ii) The name of the radionuclide and quantity of activity;

(3) Such other information as may be required by the Commission, including disposal instructions when appropriate; and

* * * * *

(Secs. 81, 161b, Pub. Law 83–703, 68 Stat. 935, 948b (42 U.S.C. 2111, 2201); sec. 201, Pub. Law 93–438, 88 Stat. 1242 (42 U.S.C. 5841))

Dated at Bethesda, Md. this 15th day of November, 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

[FR Doc. 79–36844 Filed 11–29–79; 8:45 am]

BILLING CODE 7590–01–M

[1] The term "gas and aerosol detectors" includes detectors, indicators, testers, and analyzers for gases, vapors, dusts, fumes mists, and other airborne contaminants, products of combustion (both visible and invisible), and oxygen deficient atmospheres.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-79-52]

Correction, Notice of Proposed Rulemaking Regarding Activation of Standby Mandatory Crude Oil Allocation Program

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Correction, Notice of Proposed Rulemaking.

SUMMARY: On Monday, November 26, 1979 a Notice of Proposed Rulemaking was published (44 FR 67602), entitled "Activation of Standby Mandatory Crude Oil Allocation Program." That

notice contained a technical error regarding the location for a hearing on the proposed rule to be held on December 13, 1979. The reference to "Hearing location: Room 2105, 2000 M Street, N.W." at page 67602, column two, line eight should be changed to "Hearing location: Room 3000A, Federal Building, 12th and Pennsylvania Avenues, N.W.".

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

Issued in Washington, D.C., November 27, 1979.

Lynn R. Coleman,

General Counsel, Department of Energy.

[FR Doc. 79-37079 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

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10 CFR Part 211

[Docket No. ERA-R-76-01C]

East Coast Residual Fuel Oil Entitlements; Extension

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to adopt amendments to be effective January 1, 1980 which will extend through September 30, 1980 the effects of the current provisions of the domestic crude oil allocation ("entitlements") program providing that imports of residual fuel into the East Coast market or the State of Michigan receive 50 percent of the per barrel entitlements runs credit and that an entitlement penalty ("reverse entitlements") shall only apply to domestically refined residual fuel oil which is transported by foreign flag tankers for sale or use in those markets. The current entitlements provisions relating to residual fuel oil imports are scheduled to expire on December 31, 1979. The proposed rule would implement Congressional policy on this issue.

DATES: Comments by December 31, 1979; requests to speak by December 12, 1979, 4:30 p.m.; hearing on December 18, 1979, 9:30 a.m.

ADDRESSES: All comments and requests to speak to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA–R–76–01C, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management) Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.

Josette L. Maxwell (Regulations and Emergency Planning) Economic Regulatory Administration, Room 7202–D, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–3910.

Douglas W. McIver (Entitlements Program Office), Economic Regulatory Administration, Room 6128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8660.

Joel M. Yudson (Office of General Counsel) Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6744.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments Proposed
III. Comment Procedures
IV. Other Matters

I. Background

On June 15, 1978, we issued a further notice of proposed rulemaking and public hearing (43 FR 26551, June 20, 1978) to amend the residual fuel oil provisions of the entitlements program. The proposed amendments generally would have provided for elimination of the reverse entitlements rule applicable to domestically refined residual fuel oil sold into the East Coast and would have increased entitlement benefits for residual fuel oil imported into the East Coast market.

While we were considering the comments submitted in response to the June 1978 proposal, Congress initiated legislative proceedings on the subject of entitlements for residual fuel oil. These proceedings resulted in the enactment of a legislative requirement which in effect mandated the DOE to amend the entitlements program.[1] On October 17, 1978, we issued a final rule implementing the legislative requirement (43 FR 49682, October 24, 1978). The amendments provided for three changes in the residual fuel oil entitlements provisions to be in effect during the period July 1, 1978 through June 30, 1979: First, domestically refined residual fuel oil was not subject to an entitlement penalty unless transported by foreign flag tankers into the East Coast market; second, the entitlement benefit issuable for imports of residual fuel into the East Coast market was increased from 30 percent to 50 percent of the per barrel entitlements runs credit; and third, the scope of the residual fuel oil entitlements program was expanded, by amending the definition of East Coast market, to include the State of Michigan.

On June 10, 1979, we extended the October 1978 amendments for the period July 1, 1979 through December 31, 1979 (44 FR 34468, June 15, 1979). Had the extension not been issued, there would have been an automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions which were in effect immediately prior to adoption of the October 1978 rule. In the June rule, we stated that

> * * *reversion on July 1, 1979 to the residual fuel oil entitlements provisions in effect prior to adoption of the October 1978 final rule could threaten the ability of historically import-dependent consumers to obtain adequate supplies of residual fuel oil in the current world market environment. It is our further belief that, in view of the relatively short time they have been in effect, the current residual fuel oil entitlements provisions should be extended through December 31, 1979 to provide continuity and stability during the present tight world market supply situation.

We continue to have these concerns, especially in view of the President's prohibition of imports from Iran.

In addition, since the issuance of the June 1979 rule, Congress has again expressed its view that the East Coast residual entitlements benefits should continue at the existing level. Any other level will be subject to Congressional review under the procedures of section 551 of the Energy Policy and Conservation Act.[2]

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[1] The requirements was set forth in section 307 of the Appropriations Act for the Department of Interior and Other Related Agencies for the Fiscal Year Ending September 30, 1979, Pub. L. 95–465.

[2] The Department of Interior and Related Agencies Appropriations Act for fiscal year 1980 (Pub. L. 96–126) provides as follows in Amendment No. 109: None of the funds appropriated under this Act shall be available to implement any amendment to, or provision of, the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 providing for an increase or decrease in any month beginning after the date of the enactment of this Act in the ratio of the number of entitlements issued any firm with respect to any imported refined petroleum product to the number of barrels of such product imported by such firm in such month above the ratio in effect on April 30, 1979 unless the President has transmitted such amendment or provision to the Congress as an "energy action" under section 551 of the Energy Policy and Conservation Act (Public Law 94–163) and neither House of Congress has disapproved (or both Houses have approved) such request in accordance with the procedures specified in such section 551 of such Act.

The Conference Report accompanying that Act, Report No. 96–604 notes the following with respect to the above provision: The provision allows for a 50% entitlement for imported residual fuel oil for the State of Michigan and the East Coast market

Footnotes continued on next page

II. Amendments Proposed

Under the amendment proposed today, imports of residual fuel oil into the Bureau of Mines East Coast Refining District and the State of Michigan would continue to be eligible during the period January 1, 1980 through September 30, 1980 to earn 50 percent of the per barrel entitlements runs credit. In addition, domestic refiners would continue during this period to receive 100 percent of an entitlements runs credit for each barrel of residual fuel oil produced for sale into the East Coast market and the State of Michigan which is not shipped in a foreign flag tanker. The amendment would be effectuated by changing the time periods set forth in the definition of "eligible product" in 10 CFR 211.62 and in paragraphs (a)(3) and (d)(4) of 10 CFR 211.67.

III. Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matter relevant to this notice. In order to ensure their consideration, comments should be submitted by 4:30 p.m., e.s.t., thirty days from publication of this notice, to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation: "East Coast Residual Fuel Oil Entitlements; Extension," Docket No. ERA–R–76–01C. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify any information or data considered by you to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure for requests to make oral presentation.* The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. If so, you should describe the interest concerned; if appropriate, state why you are a proper representative of a group or class of persons that has such an interest; and provide a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing. If you are selected to be heard at the hearing, we will notify you before 4:30 p.m., December 14, 1979. You will be required to make 100 copies of your statement available in Room 2214, 2000 M Street, N.W., Washington, D.C. 20461 by 4:30 p.m., on the last business day preceding the hearing.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may also submit questions to be asked of any person making a statement at the hearing to the address indicated in the "Addresses" section of this Notice for requests to speak by 4:30 p.m., December 17, 1979. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B–110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

IV. Other Matters

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Act, Pub. L. 95–91, we have referred this rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

B. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. 93–275 as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment.

A copy of the notice was sent to the EPA Administrator. The Administrator commented that he does not foresee these actions having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

C. National Environmental Policy Act

It has been determined previously (see the preamble to the June 1979 rule) that the rule continuing the existing entitlements treatment for East Coast residual fuel oil imports does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

Footnotes continued from last page

instead of the 30% entitlement included in the Senate-passed bill. This entitlement is identical to that provided for the past year in the fiscal year 1979 Interior and Related Agencies Appropriations Act. Additionally, any changes to imported residual fuel oil entitlements or entitlements for any other imported refined petroleum products are made subject to "energy action" procedures under the Energy Policy and Conservation Act, Public Law 94–163.

D. Executive Order 12044

A regulatory analysis of the potential impacts of the amendments currently in effect was prepared and made publicly available on October 20, 1978. In addition, in connection with the June 1979 rule we reviewed our October 1978 findings and made revised findings publicly available. Since today's actions will continue the effectiveness of those same provisions relating to residual fuel oil, today's proposed rule will not require the preparation of a further regulatory analysis.

We intend to make a final rule in this matter effective on January 1, 1980 (although the rule itself may not be issued until shortly thereafter). We are thus providing a 30-day public comment period as required under section 501 of the Department of Energy Organization Act, but are not providing the sixty days for public comment under Executive Order 12044. The shorter comment period is necessary to effect Congressional intent that any change in entitlement benefits for residual fuel oil imports, which would occur if the current regulation were to elapse, should be subject to Congressional review. Futhermore, continuation of the present entitlement benefits for residual fuel oil imports is especially important to prevent the interruption of adequate supplies of residual fuel oil for historically import-dependent consumers, particularly during the winter heating season.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; EO 11790, 39 FR 23185; EO 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below, effective January 1, 1980.

Issued in Washington, D.C., November 28, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. The definition of "eligible product" in § 211.62 is revised to read as follows:

§ 211.62 Definitions.

For purposes of this subpart—

* * * * *

"Eligible product" means residual fuel oil imported into the eligible market in the period January 1, 1980 through September 30, 1980, except that an import of residual fuel oil into the United States customs territory which has been processed in the U.S. Virgin Islands shall not be considered an eligible product; *And provided*, that, Canadian residual fuel oil imported into the State of Michigan will qualify as an eligible product.

* * * * *

2. Subparagraphs (a)(3) and (d)(4) of § 211.67 are revised to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.*

* * * * *

(3) For each month in the period January 1, 1980, through September 30, 1980, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements equivalent to fifty percent (50%) of the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to a number of barrels of that eligible product imported by that eligible firm. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 and 7505, as appropriate, in which importation takes place.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(4) For the period January 1, 1980 through September 30, 1980, for purposes of the calculations in subparagraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (but not for purposes of paragraph (e) of this section), the volume of crude oil runs to stills of any domestic refinery attributable to production of residual fuel oil transported in foreign flag tankers for sale (whether directly for consumption or for resale) or use in the eligible market (as defined in § 211.62) shall be reduced by fifty (50%) percent. Any export sales of residual fuel oil giving rise to a deduction under paragraph (d)(2) above shall not be considered as residual fuel oil production for purposes of this paragraph (d)(4).

* * * * *

[FR Doc. 79-37080 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Proposed Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed Rule.

SUMMARY: The Equal Employment Opportunity Commission proposes to amend its regulations on designation of one State Agency so that it may handle employment discrimination charges filed with the Commission. Deferral to a State or Local agency is provided for in section 706(c) of Title VII of the Civil Rights Act of 1964, as amended. The proposal would authorize the Agency to process charges deferred to it by the Commission.

DATES: Written comments pursuant to this notice must be filed with the Commission on or before December 15, 1979.

ADDRESS: Comments should be sent to Equal Employment Opportunity Commission. Office of Field Services (State and Local), 2401 E. Street NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Franklin F. Chow, telephone 202-634-6040, Equal Employment Opportunity Commission (State and Local), 2401 E. Street NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Pursuant to § 1601.71 Title 29, Chapter XIV of the Code of Federal Regulations as revised and published in the Federal Register, 42 FR 55388, October 14, 1977, the Equal Employment Opportunity Commission (hereinafter referred to as the Commission) proposed that the agency listed below be designated as a "706 Agency." The purpose for such designation are as follows: First, that the agency receive charges deferred by the Commission pursuant to Section 706 (c) and (d) of Title VII of the Civil Rights Act of 1964, as amended; second, that the Commission accord "substantial weight" to the final findings and orders of the agencies pursuant to Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended. The proposed designation of the agency listed below is hereby published to provide any person or organization not less than 15 days within which to file written comments with the Commission as provided for under § 1601.71(a). At the expiration of the 15 days period, the Commission may effect designation of the agency by publication of an amendment to § 1601.74(a).

The Proposed "706 Agency" is as follows:

Wisconsin State Personnel Commission:[1]

Signed at Washington, D.C. this 27th day of November 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-36961 Filed 11-29-79; 8:45 am]

BILLING CODE 6570-06

29 CFR Part 1625

Proposed Interpretations; Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission

ACTION: Proposed Interpretations.

SUMMARY: On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, (ADEA) as amended, 29 U.S.C. 621, 623, 625, 626–633 and 634 was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The Commission assumed enforcement of the ADEA on that date. The Commission proposes to adopt, except as modified herein, certain of the interpretations of the Department of Labor with respect to the enforcement of the Age Discrimination in Employment Act of 1967, as amended. The Department's interpretations currently appear at 29 CFR Part 860.

DATE: Comments must be received on or before January 29, 1980.

ADDRESS: Send comments to John Pagano, Office of the General Counsel, Legal Counsel Division, Room 2254, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: John Pagano (202) 634–6595.

SUPPLEMENTARY INFORMATION: The present age discrimination interpretations of the Department of Labor set forth in 29 CFR Part 860 have been renumbered as 29 CFR Part 1625.

The age discrimination interpretations of the Department of Labor, issued in 1968 and amended several times thereafter, have been revised to reflect the statutory changes made in 1974 and 1978 as well as to reflect both the impact of judicial decisions and the past experience of the Department of Labor and the Commission. It is the Commission's position that these proposed interpretations be interpreted in a manner which is consistent with Title VII of the Civil Rights Act of 1964. The Commission has deleted many of the examples contained in the Department of Labor Interpretations. In some instances the deletions were made for stylistic purposes while in other instances examples were deleted because they were inconsistent with current law or because the Commission needed to accumulate expertise in certain areas.

Section 1625.1, entitled "Definitions," refers to various terms whose meanings are set forth in the ADEA and replaces the general introductory material contained in the former § 860.1. Section 1625.2 was derived from the former § 860.91 and is an articulation of the limited specific circumstances in which it may be appropriate to discriminate among individuals within the protected age bracket.

The statutory material which had appeared in the former §§ 860.35 and 860.36 was deleted and those two sections were combined to form the new § 1625.3 entitled "Employment Agency." Section 1625.4 entitled "Help Wanted Notices or Advertisements" comes directly from the former § 860.92 of the same title, with the statutory material deleted in the new version. Section 1625.5 entitled "Employment Applications" is a shortened version of the former § 860.95 and is intended to indicate that inquiries which are not necessarily responsive to an employer's ad, notice, etc. may also be considered as employment applications.

Section 1625.6 entitled "Bona Fide Occupational Qualification" was taken from § 860.102. Statutory material as well as the examples of exceptions have been deleted from the new section.

The Commission wishes to note that in circumstances where a bona fide occupational qualification operates to displace a particular employee, that employee retains all rights to apply and be considered for all other available positions for which that employee is qualified. In addition, the Commission encourages employers to offer alternative employment to those employees legitimately displaced.

Section 1625.7 reflects changes made in the former §§ 860.103 and 860.104. Section (c) has been rewritten to indicate explicitly that age discrimination cannot be any element upon which a differentiation is based. Subsections (d) through (f) have been substantially shortened and the numerous examples have been deleted.

Section 1625.8 entitled "Bona Fide Seniority Systems" is a reproduction with only minor modifications of the former § 860.105, while § 1625.9 replaces the former § 860.110.

Former §§ 860.20, 860.30, 860.31, 860.50, 860.75, and 860.104 have been deleted entirely. To the extent possible, §§ 860.30 and 860.31 have been integrated into § 1625.1 entitled "Definitions."

In addition, the Commission wishes to note the addition of § 1625.9 entitled "Prohibition of Involuntary Retirement." This interpretation was drafted by the Department of Labor in response to the statutory changes made to the Act in 1978. It appears herein for the first time and, accordingly, requires explanatory comments.

Prohibition of involuntary retirement.

A principal change made by the 1978 Amendments was the addition of explicit language in section 4(f)(2) to make clear that the Act prohibits involuntary retirement because of age of any employee within the protected age group, even though pursuant to a bona fide employee benefit plan.

Originally, the Act had provided an exception, in section 4(f)(2), from the general prohibitions against discrimination. The exception read, in part, as follows:

> (f) It shall not be unlawful for an employer, employment agency, or labor organization— * * *
>
> (2) to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *.

The Department of Labor had interpreted this provision as "authoriz[ing] involuntary retirement irrespective of age: *Provided,* That such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2)." 29 CFR § 860.110(a), 34 FR 9709 (June 21, 1969). The Department took the position that in order to meet the requirements of section 4(f)(2), the mandatory retirement provision has to be (1) contained in a bona fide pension or retirement plan, (2) required by the terms of the plan and not optional, and (3) essential to the plan's economic survival or to some other legitimate purpose. In other words, the mandatory retirement provision could not be in the plan for the sole purpose of moving out older workers, which purpose was made unlawful by the ADEA. See *Age Discrimination in Employment Act of 1967: A report covering activities under the Act during 1974* (U.S. Department of Labor, Washington, 1975), p. 17.

[1] The Wisconsin State Personnel Commission has been proposed as a 706 agency for all charges covering the employment practices of the agencies of the State of Wisconsin only.

Some courts, however, construed section 4(f)(2) to permit the involuntary retirement, solely on the basis of age, of employees within the age group protected by the Act, even though not all the tests established by the Department were met. Thus, in *Brennan* v. *Taft Broadcasting Co.*, 500 F. 2d 212 (5th Cir. 1974), the Fifth Circuit held that a forced retirement based solely on age was lawful, since it was permitted (although not required) by the terms of a bona fide employee benefit plan which antedated the Act, thus "eliminating any notion that [the plan] was adopted as a subterfuge for evasion" (500 F. 2d at 215). And, in *Zinger* v. *Blanchette*, 549 F. 2d 901 (3d Cir. 1977), *cert. denied* 434 U.S. 1008 (1978), the Third Circuit upheld an involuntary retirement under a similar employee benefit plan on the ground that the plan provided substantial benefits.

The Fourth Circuit reached a contrary result in *McMann* v. *United Airlines, Inc.*, 542 F. 2d 217 (4th Cir. 1976). Adopting the Department of Labor's position as *amicus curiae*, the Court held that forced retirement of an individual within the protected age group was permitted by section 4(f)(2) only if "legitimate considerations other than an employer's preference for youth justify the forced retirement[s]" *McMann* v. *United Airlines, Inc.*, 542 F. 2d at 222. An early retirement provision, the Court said, must have "some economic or business purpose other than arbitrary age discrimination." *Id.* at 221.

The Supreme Court agreed to review the decision. While the case was still pending before the Supreme Court, both the House and the Senate passed bills adding virtually identical langauge to section 4(f)(2) to make clear that the exception is inapplicable to an employee benefit plan or seniority system which requires or permits the involuntary retirement, because of age, of any individual within the age group protected by the Act. The Senate Report specifically rejected the *Taft Broadcasting* and *Zinger* decisions as erroneous, and approved the Fourth Circuit's decision in *McMann* (*See* S. Rept. No. 95-493, 95th Cong., 1st Sess. (1977), p. 10). Both the Senate and the House Reports described the amendment as a legislative clarification of the existing statutory language (H.R. Rept. No. 95-527, Part 1, 95th Cong., 1st Sess. (1977), p. 8; S. Rept. No. 95-493, 95th Cong., 1st Sess. (1977), p. 10).

Before the Conference Committee had reached agreement on other parts of the bills, the Supreme Court, on December 12, 1977, reversed the Fourth Circuit's ruling in McMann. *United Air Lines, Inc.* v. *McMann*, 434 U.S. 192 (1977). A majority of the court concluded that Congress, in enacting the ADEA in 1967, had not intended to invalidate retirement plans instituted in good faith before its enactment, or to require employers to prove a business or economic purpose to justify involuntary retirements pursuant to such plans. Accordingly, the Supreme Court held that section 4(f)(2) permitted the involuntary retirement of an employee because of age, if it was done pursuant to the terms of a bona fide pension plan adopted before the enactment of the ADEA.

Because the Supreme Court expressly relied on the fact that the United Airlines plan was in existence before the enactment of the statute, the *McMann* decision did not apply to plans which were adopted or materially amended after the enactment of the ADEA in 1967. In the Commission's view, even if the 1978 amendments had never been enacted, provisions in such later adopted or amended plans which cause or permit involuntary retirement of employees, because of age, constitute a "subterfuge to evade the purposes of th[e] Act" within the meaning of section 4(f)(2), unless justified by some reasonable economic or business purpose. *United Air Lines, Inc.* v. *McMann*, 434 U.S. at 203. *See Hannan* v. *Chrysler Motors Corp.*, 443 F. Supp. 802 (E.D. Mich. 1978); *Cowlishaw* v. *Armstrong Rubber Co.*, 450 F. Supp. 148 (E.D. N.Y. 1978); but *see Marshall* v. *Hawaiian Telephone Co.*, 575 F. 2d. 763 (9th Cir. 1978).

After the Supreme Court's decision, the Conference Committee issued its report (H.R. Rept. No. 95-950, 95th Cong., 2d Sess. (March 14, 1978)). With respect to involuntary retirement under section 4(f)(2), a final clause was added to the original provision, so that it now reads:

> (f) It shall not be unlawful for an employer, employment agency, or labor organization—
> * * *
> (2) to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, *and no such * * * employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual * * *.* [new language in italics]

In explaining this amendment, the Conference Report stated (p. 8):

> The conferees agree that the purpose of the amendment to section 4(f)(2) is to make absolutely clear one of the original purposes of this provision, namely, that the exception does not authorize an employer to require or permit involuntary retirement of an employee within the protected age group on account of age.
>
> In *McMann* v. *United Airlines*, 98 S., CT. 244 (1977), the Supreme Court held to the contrary, reversing a decision reached by the Fourth Circuit Court of Appeals, 542 F.2d 217 (1976). The conferees specifically disagree with the Supreme Court's holding and reasoning in that case. Plan provisions in effect prior to the date of enactment are not exempt under section 4(f)(2) by virtue of the fact that they antedate the act or these amendments.

The interpretation in § 1625.9 of the Interpretative Bulletin reflects the Congressional intentions as shown by this unequivocal legislative history.

Effective Date of Amendment of Section 4(f)(2)

Section 2(b) of the ADEA Amendments of 1978 specifies that the amendment to section 4(f)(2) "shall take effect on the date of enactment of this Act (April 6, 1978) * * *." The stated "purpose of the amendment" was not to impose a new prohibition, but "to make absolutely clear one of the original purposes of this provision" (Conference Report, p. 8). The Commission is therefore of the view that the amendment applies to ADEA actions pending on, or filed after, the date of enactment, even though the cause of action may have arisen before that time. This position is based on *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711 (1974), in which the Supreme Court ruled that a court is to apply the statutory law in effect at the time of its decision, unless manifest injustice would result or unless there is statutory direction or legislative history to the contrary.

A delay in the effective date is, however, provided by section 2(b) of the 1978 amendments to the Act (92 Stat. 189) for certain employees covered by collective bargaining agreements, as follows:

> [I]n the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938), and which would otherwise be prohibited by the amendment (to section 12 of the Act), the amendment (to section 4(f)(2) of the Act) shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first.

According to the Conference Committee Report, this delay in the effective date applies only where a bona fide employee benefit plan (or seniority system) provided by a collective

bargaining agreement in effect on September 1, 1977, authorizes involuntary retirement of "persons 65 through 69 years of age" (H.R. Rept. No. 95–950, 95th Cong., 2d Sess. (1978), p. 8). Accordingly, the interpretation makes clear that the delayed effective date provision applies only where the collectively bargained employee benefit plan or seniority system provides for involuntary retirement at age 65 (or at some other age greater than 65 but less than 70). For this reason, the delayed effective date provision does not authorize the involuntary retirement of any employee who is less than 65 years old, nor does it authorize the involuntary retirement of any employee who is at least 65 but less than 70 years old if such retirement is pursuant to an employee benefit plan or seniority system provision authorizing involuntary retirement at some age less than 65.

The interpretation takes the position that the delay in the effective date of the amendment to section 4(f)(2) applies only if the involuntary retirement provision of a seniority system or an employee benefit plan is the result of collective bargaining. This interpretation is in accord with the legislative history. Thus, the Conference Committee Report limits the delay to "bona fide employee benefit plans or seniority systems provided by collective bargaining agreements" (Conference Report, p. 8). Likewise, the Senate Report states that "[t]his postponed effective date would only apply to pension plans which were negotiated as a part of a collective bargaining agreement (Conference Report, p. 11). The House Report adds that "[t]his postponed effective date would not, however, apply to pension plans not the result of collectively bargained agreements" (Conference Report, p. 9). The reason for this limitation, according to the Senate Report,

"* * * is to recognize, and provide the maximum deference to, contracts negotiated between management and labor, consistent with the committee's desire to end mandatory retirement of those workers under age 70. The committee recognizes that these contracts were negotiated in good faith and that reciprocal agreements and concessions were made in exchange for the mandatory retirement provision. (Senate Report, p. 11; see also House Report, pp. 8–9.)"

The interpretation also takes the position that the delay in the effective date of the amendment to section 4(f)(2) applies only where the bona fide employee benefit plan expressly authorizes employees between 65 and 70 to be retired involuntarily on account of age. This approach is in accord with the Conference Committee Report, which characterizes the statutory provision delaying the effective date of the section 4(f)(2) amendment as applying to plans in which "mandatory retirement * * * is required or permitted" (Conference Report, p. 8). Moreover, a plan is considered "bona fide" only if its terms have been accurately described in writing to all employees and if it is actually carried out pursuant to those terms.

These proposed interpretations are necessary to assist in the transfer of functions from the Department of Labor to the Equal Employment Opportunity Commission. The Commission is desirous of receiving comments concerning these interpretations from interested members of the public to comply with the spirit of Executive Order 12044. Accordingly, the Commission will receive comments for a period of sixty days after publication. If appropriate, the Commission will reconsider the views expressed within before publishing final interpretations.

In addition, in accordance with Executive Order 12067, the Commission has solicited the views of affected Federal agencies.

The proposed interpretations appear below.

Signed at Washington, D.C., this 21st day of November 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

It is proposed to amend Title 29, Code of Federal Regulations as follows:

1. In Part 1625, §§ 1625.1—1625.9 would be added to read as set forth below.

2. Section 860.120 in Chapter V published as a final rule at 44 FR 30658, May 25, 1979 would be transferred to Chapter XIV and renumbered § 1625.10.

PART 1625—INTERPRETATIONS; AGE DISCRIMINATION IN EMPLOYMENT ACT

Sec.

1625.1 Definitions.
1625.2 Discrimination between individuals protected by the Act.
1625.3 Employment Agency.
1625.4 Help wanted notices or advertisements.
1625.5 Employment applications.
1625.6 Bona fide occupational qualifications.
1625.7 Differentiations based on reasonable factors other than age.
1625.8 Bona fide seniority systems.
1625.9 Prohibition of involuntary retirement.
1625.10 Costs and benefits under employee benefit plans.[1]
1625.11 Exemption for employees serving under a contract of unlimited tenure.[2]
1625.12 Exemption for bona fide executive or high policymaking employees.[2]

Authority.—81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68, and sec. 2; Reorg. Plan No. 1 of 1978, 43 FR 19807.

§ 1625.1 Definitions.

The Equal Employment Opportunity Commission is hereinafter referred to as the "Commission". The terms "person", "employer", "employment agency", "labor organization", and "employee" shall have the meanings set forth in Section 11 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, hereinafter referred to as the "Act". References to "employers" in this part state principles that are applicable not only to employers but also to labor organizations and to employment agencies.

§ 1625.2 Discrimination between individuals protected by the Act.

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals within the 40–70 age bracket. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.

(b) The extension of additional benefits such as longer vacations, increased severance pay or more favorable shift differentials, may be lawful in certain circumstances when made to older employees within the protected age bracket to promote and encourage opportunities for such individuals who might otherwise experience disproportionate hardship, so long as the extension of such benefits does not create an unreasonable hardship for the younger employees within the protected age bracket.

§ 1625.3 Employment Agency.

(a) As long as an employment agency regularly procures employees for at least one covered employer, it qualifies under section 11(c) of the Act as an employment agency with respect to all of its activities whether or not such activities are for employers covered by the Act.

(b) The prohibitions of Section 4(b) of the Act apply not only to the referral activities of a covered employment agency but also to the agency's own

[1] See 44 FR 30658, May 25, 1979.

[2] See 44 FR 66799, November 21, 1979.

employment practices, regardless of the number of employees the agency may have.

§ 1625.4 Help Wanted Notices or Advertisements.

(a) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35", "young," "college student," "recent college graduate," "boy," "girl," or others of a similar nature, such a term or phrase discriminates against the employment of older persons and is a violation of the Act. Such phrases as "age 40 or 50," "age over 65," "retired person," or "supplement your pension" are also prohibited since they discriminate against others within the protected group.

(b) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a lawful purpose.

§ 1625.5 Employment Applications.

A request on the part of an employer for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment application forms which request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant, as by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 70 years of age." The term "employment applications," refers to all inquiries about employment or applications for employment or promotion including, but not limited to, resumes or other summaries of the applicant's background. It relates not only to preemployment inquiries but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in Section 4 of the Act.

§ 1625.6 Bona Fide Occupational Qualifications.

Whether occupational qualifications will be deemed to be "bona fide" and "reasonably necessary to the normal operation of the particular business," will be determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception it must be narrowly construed, and the burden of proof in establishing that it applies is the responsibility of the employer who relies upon it.

§ 1625.7 Differentiations based on reasonable factors other than age.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization *** to take any action otherwise prohibited under paragraphs (a), (b), (c), or (e) of this section *** where the differentiation is based on reasonable factors other than age *****"

(b) No precise and unequivocal determination can be made as to the scope of the phrase "differentiation based on reasonable factors other than age." Whether such differentiations exist must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

(c) A factor, upon which a differentiation is based, is not a valid defense, however, if age discrimination comprises any element of the employment decision adverse to the applicant or employee, either expressly or by implication.

(d) When an employment practice, including a test, is claimed as a basis for different treatment of employees or applicants for employment on the ground that it is a "factor other than age," and such a practice has an adverse impact on persons in the protected age group and cannot be shown to be related to job performance, such a practice is unlawful. A vital factor in employee testing as it relates to the 40–70 age group protected by the statute is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, due to the tremendous increase in the use of tests in primary and secondary schools in recent years, may generally have had more experience in test-taking than older individuals and consequently, where an employee test is used as the sole tool or the controlling factor in the employee selection procedure, such younger persons may have an advantage over older applicants who may have had considerable on-the-job experience but who due to age, are further removed from their schooling.

(e) The burden of proof in establishing that the differentiation was based on factors other than age is upon the employer.

(f) A differentiation based on the average cost of employing older employees as a group is unlawful except with respect to employee benefit plans which qualify for the Section 4(f)(2) exception of the Act. (See also § 1625.10)

§ 1625.8 Bona Fide Seniority Systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act except that no such seniority system * * * shall require or permit the involuntary retirement of any individual specified by Section 12(a) of this Act because of the age of such individual." (In the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act), the provisions of this section with respect to involuntary retirement of individuals between the ages of 65 and 70 effective upon the termination of the collective bargaining agreement or January 1, 1980, whichever occurs first. (See also § 1625.10 (d), (e), and (f)).)

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers.

(b) Adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act.

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will not be considered a bona fide seniority system within the meaning of the Act.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are

prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Such systems will not be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

§ 1625.9 Prohibition of involuntary retirement.

(a)(1) As originally enacted in 1967, section 4(f)(2) of the Act provided: "It shall not be unlawful * * * to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." The Department of Labor interpreted the provision as "authoriz[ing] involuntary retirement irrespective of age: *Provided,* That such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2)." *See* 29 C.F.R. 860.110(a), 34 FR 9709 (June 21, 1969). The Department took the position that in order to meet the requirements of section 4(f)(2), the involuntary retirement provision had to be (1) contained in a bona fide pension or retirement plan, (2) required by the terms of the plan and not optional, and (3) essential to the plan's economic survival or to some other legitimate business purpose—*i.e.,* the provision was not in the plan as the result of arbitrary discrimination on the basis of age.

(2) As revised by the 1978 amendments, section 4(f)(2) was amended by adding the following clause at the end: "and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual * * *." The Conference Committee Report expressly states that this amendment is intended "to make absolutely clear one of the original purposes of this provision, namely, that the exception does not authorize an employer to require or permit involuntary retirement of an employee within the protected age group on account of age" (H.R. Rept. No. 95–950, p. 8).

(b)(1) The amendment applies to all new and existing seniority systems and employee benefit plans. Accordingly, any system or plan provision requiring or permitting involuntary retirement is unlawful, regardless of whether the provision antedates the 1967 Act or the 1978 amendments.

(2) Where lawsuits pending on the date of enactment (April 6, 1978) or filed thereafter challenge involuntary retirements which occurred either before or after that date, the amendment applies.

(c) The amendment protects all individuals covered by section 12(a) of the Act. Accordingly, before January 1, 1979 (the effective date of the amendment to section 12(a) which raised the upper age limit to 70), the amendment applied to individuals who were at least 40 years of age but less than 65 years of age. On and after that date it applies also to individuals who are at least 65 years of age but less than 70 years of age, unless otherwise exempt.

(d)(1) To allow time for the adjustment of collective bargaining agreements, the 1978 amendments provide that "in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938), and which would otherwise be prohibited by the amendment (to section 12 of the Act), the amendment (to section 4(f)(2) of the Act) shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first" (Pub. L. 95–256, section 2(b), 92 Stat. 189).

(2) This delay of up to one year in the effective date of the amendment to section 4(f)(2) applies only to the protection afforded against involuntary retirement and affects only individuals who have attained 65 years of age but not 70 years of age on and after January 1, 1979. Such individuals may not be involuntarily retired unless (i) the retirement age specified in the plan is 65 or above; (ii) the retirement is authorized by the express terms of a bona fide seniority system or a bona fide employee benefit plan which is not a subterfuge to evade the purposes of the Act; and (iii) those terms have been adopted no later than September 1, 1977 and are pursuant to a collective bargaining agreement in effect on September 1, 1977. "Bona fide" shall have the same meaning as in § 860.120(b), as amended, 44 FR 30658 (May 25, 1979).

(3) Where a collective bargaining agreement expired prior to September 1, 1977, and a new agreement was signed subsequent to that date effective retroactively to the expiration date of the previous agreement, the exemption does not apply. The expressed congressional intent was to exempt only those agreements which had been "negotiated" before September 1, 1977 (see S. Rept. No. 95–493, 95th Cong., 1st Sess. (1977), p. 11; H.R. Rept. No. 95–527, Part 1, 95th Cong., 1st Sess. (1977), pp. 8–9).

(e) The exemption of up to one year is inapplicable after the expiration of the collective bargaining agreement in effect on September 1, 1977, whether or not the agreement is extended or renewed. The exemption is in no event applicable after January 1, 1980.

(f) Neither section 4(f)(2) nor any other provision of the Act makes it unlawful for a plan to permit individuals to elect early retirement at a specified age at their own option. Nor is it unlawful for a plan to require early retirement for reasons other than age.

§ 1625.10 Costs and benefits under employee benefit plans.

(See 44 FR 30658, May 25, 1979)

§ 1625.11 Exemption for employees serving under a contract of unlimited tenure.

(See 44 FR 66799, November 21, 1979)

§ 1625.12 Exemption for bona fide executive or high policymaking employees.

(See 44 FR 66799, November 21, 1979)

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DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, VII
33 CFR Ch. II

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Department of Defense.

ACTION: Publication of Agenda of Regulations, significant and nonsignificant, under review or development by the Department of Defense and its components.

SUMMARY: In November of 1978, the Department of Defense published its initial Semiannual Agenda of Significant Regulations and the DoD plan for implementing E.O. 12044, "Improving Government Regulations." The Department, although not considered in the category of a regulatory agency, incorporated several reform programs designed to meet the spirit and intent of the E.O. insofar as applicable to its regulatory process. The original agenda in November of 1978, and subsequent agenda in May of 1979, contained many regulations selected for review which were primarily internal in nature, defense mission oriented, and did not meet the "significant regulation" criteria as established under the E.O. These regulations, although limited in public

impact, nevertheless were published in an effort to increase public knowledge and to allow participation in the DoD rulemaking process. These agendas of regulations are but part of the Departments overall efforts in regulatory reform. In addition, several programs are being pursued by DoD components which are tailored to suit their individual mission and statutory requirements. This current DoD agenda contains those regulations deemed significant and appropriate for public participation and also provides a summary overview of other reform efforts being implemented. Public comments and participation in this review and development process are invited.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD Regulatory Improvement Program and general Semiannual Agenda information contact Colonel Peter H. Karalus, telephone 202–695–4281 or write; Directorate for Organizational and Management Planning, OASD(C), Pentagon Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION: The Semiannual Agenda format is broken into sections to reflect the various DoD organization structures and management arrangements within the Department. Included are; the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Each component section contains the following information:

Part I: Status of Regulations Previously Reviewed (Agendas of November 1978 and May 1979).

Part II: Regulations Under Development.

Part III: Regulations Requiring Regulatory Analysis.

Individual variations may be found in the agenda format due to the separate missions, functions, and responsibilities of the Defense components involved.

DATES: The Department of Defense will publish its next Semiannual Agenda on May 30, 1980. It will contain an update to this and previous agendas including regulations under development and/or regulatory analysis. This Agenda is published by authority of the Secretary of Defense.

David O. Cooke,

Deputy Assistant Secretary of Defense, (Administration).

November 21, 1979.

Office of the Secretary of Defense

Improving Government Regulations; Semiannual Agenda

ACTION: Semiannual Agenda of regulatory and procedural documents under development or published by the Office of the Secretary of Defense.

SUMMARY: With the exception of the Corps of Engineers, Department of the Army, the Department of Defense has no regulatory responsibilities that affect the public at large. However, the Office of the Secretary of Defense, as the policy-making element of the Department of Defense—an Executive Agency—implements Public Laws and other statutes that affect its operations and, by extension, segments of the private sector. Those implementing directives are almost always published in the Federal Register as proposed rules to ensure their widest possible exposure to those concerned. Later, the Military Departments and Defense Agencies may supplement OSD's directives to take into account their charters and requirements.

The OSD Agenda reflects both internal regulatory and procedural directives and those resulting from Public Laws and other statutes.

In compliance with Executive Order 12044, OSD continues its accelerated review program to update, revise, and, if necessary, terminate its directives and regulations. Its editorial staff pursues vigorously a policy of "plain English." Although the OSD staff has considered the applicability of a regulatory analyses, it is difficult to put a price tag on a DoD regulation which is turned inward, rather than toward the public, as is the case with regulatory agencies. Senior echelons' oversight is enforced. Systematic sunset reviews, with particular scrutiny of 5 year or older directives, based on specific timetables, have become routine. However, many of the older directives and regulations are based—or are the result of—laws and statutes that also require review and revision. One example is the recent revision of title 5 U.S.C. which, in turn, affects over 70 DoD Directives and DoD Instructions, all now requiring revision. This action will ultimately result in the Military Departments and Defense Agencies revising their corresponding supplementary regulations under the guidance of the Department's Regulatory Reform Plan.

FOR FURTHER INFORMATION CONTACT: Where a contact officer is indicated, contact that individual. For other information on the Agenda, contact Mrs. Margarete S. Healy, telephone 202–697–4111, or write Directives Division, C&D, WHS, Room 2A286, Pentagon, Washington, D.C. 20301.

Part I.—Status of Regulations Previously Reviewed (Nov. 30, 1978–May 30, 1979)

[Period June 1, 1979–Oct. 31, 1979]

CFR No.	Title	DoD directive/ DoD instruction	Status
32 CFR Part 41	Enlisted Administrative Separations	1332.14	Final manuscript in preparation.
32 CFR Part 43a	Indebtedness of Military Personnel	1344.9	Published 44 FR 31014 (May 30, 1979).
32 CFR Part 65	Nominations of Chaplains for the Armed Forces	1304.19	Proposed Rulemaking published 44 FR 50616, Aug. 29, 79. Final manuscript prepared.
32 CFR Part 67	Allocation of Reserve Forces Units to and Determinations of Manpower in Local Communities.	1200.1	Published 44 FR 34495, June 15, 79.
32 CFR Part 100	Unsatisfactory Performance of Ready Reserve Obligations.	1215.13	Published 44 FR 51568, Sept. 4, 79.
32 CFR Part 101	Participation in Reserve Training Programs	1215.5	Published 44 FR 53159, Sept. 13, 79.
32 CFR Part 115	Assignment to and Transfer Between Reserve Categories, Discharge from Reserve Status, Transfer to the Retired Reserve, and Notification of Eligibility for Retired Pay.	1200.15	Final manuscript in preparation.
32 CFR Part 157	Dissemination of DoD Technical Information	5200.21	To be published November 1979.
32 CFR Part 168	Management and Control of Engineering and Technical Services.	1130.2	Published 44 FR 47767, August 15, 79.
32 CFR Part 169	Commercial and Industrial Activities	4100.15	To be published as proposed rule November 1979.
32 CFR Part 169a	Operation of Commercial and Industrial Activities	4100.33	To be published as proposed rule November 1979.
32 CFR Part 179	Use of Contractor and Government Resources for Maintenance of Materiel.	4151.1	To be prepared for coordination.
32 CFR Part 195	Configuration Management	5010.9	Published 44 FR 31177, May 31, 1979.
32 CFR Part 196	Work Breakdown Structures for Defense Materiel Items.	5010.20	Final manuscript in preparation.

Part I.—Status of Regulations Previously Reviewed (Nov. 30, 1978–May 30, 1979)—Continued

[Period June 1, 1979–Oct. 31, 1979]

CFR No.	Title	DoD directive/ DoD instruction	Status
32 CFR Part 209	Use of the Metric System of Measurement	4120.18	Final manuscript in preparation.
32 CFR Part 211	DoD Foreign Tax Relief Program	5100.64	Published 44 FR 50598, August 29, 1979
32 CFR Part 214	Environmental Effects in the United States of DoD Actions.	6050.1	Published 44 FR 46841, August 9, 1979.
32 CFR Part 217	Recreational Use of Off-Road Vehicles on DoD Lands.	6050.2	Published 44 FR 30336, May 25, 1979.
32 CFR Part 238	Armed Forces Community Relations	5410.19	To be published November 1979.
32 CFR Part 244	Honorary Awards to Private Citizens and Organizations.	1432.2	Final manuscript in preparation.
32 CFR Part 300	Nondiscrimination in Federally Assisted Programs	5500.11	Final manuscript in preparation.

Part IA.—Existing Regulations Selected for Review

CFR No.	Title	DoD directive/ DoD instruction	Reason regulation selected	Regulatory analysis Yes/No	Contact officer
32 CFR Part 40	Standards of Conduct	5500.7	Update	No	D. Ream, 695-3272.
32 CFR Part 42	Interception of Wire and Oral Communications for Law Enforcement Purposes.	5200.24	Update	No	W. Bell, 697-7266.
32 CFR Part 151	Status of Forces Policies and Information	5525.1	Update	No	To be published November 1979.
32 CFR Part 194	International Coproduction Dual Production Programs and Agreements.	2000.9	Update	No	G. Frank, 274-8982.
32 CFR Part 237	Community Relations	5410.18	Update	No	LTC R. Egenmaier, 695-2709.
32 CFR Part 245	Plan for the Security Control of Air Traffic and Air Navigation Aids.	5030.36	Update	No	E. Greinke, 697-8970.
32 CFR Part 286	Availability to the Public of Department of Defense Information.	5400.7	Update	No	Col. R. Farris, 697-1180.
32 CFR Part 296	Publication of Proposed and Adopted Regulations Affecting the Public.	5400.9	Update	No	R. Gilliat, 697-9341.

Part II.— Regulations Planned or Under Development

CFR No.	Title	Legal basis	Purpose	Regulatory analysis	Comment date	Contact officer
32 CFR Part 56 (DoD 1100.xx)	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.	Pub L. 93-112, section 504.	Implement the law.	No	Nov. 13, 1979 (Proposed rulemaking published 44 FR 58750 October 11, 79).	C. Haughton, Jr., 695-0106.
32 CFR Part 171 (DoD 4165.xx)	DoD Implementation of Personnel Parking Facilities Program.	OMB Circular A-118, 40 U.S.C. 490.	Implement OMB Circular A-118.	To be decided		F. Roche, 697-7227.
32 CFR Part 197 (DoD 6050.7)	Environmental Effects Abroad of Major DoD Actions. (This entry was inadvertently omitted from the May 30, 1979 Agenda).	E.O. 12114	Implement the E.O..	No	Final rule published 44 FR 21788, Apr 12, 79.	Col. D. Sadler, 695-7820.
32 CFR Part 199(6010.8-R)	Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS CAT Scanning).	10 U.S.C. 1079, 1086.	To expand certain health benefits resulting from advanced medical technology.	No	Nov. 29, 1979 (Proposed rule published 44 FR 62295, Oct 30, 1979).	LTC L. Rowlette, 695-6281.

Department of the Army

Improving Government Regulations; Semiannual Agenda

ACTION: Publication of the Department of the Army third Semiannual Agenda of Regulations as required under E.O. 12044 and implemented under the DoD plan for Improving Government Regulations.

SUMMARY: The Department of the Army continues to review and evaluate the need for the development of new regulations and to improve existing regulations in support of the President's Executive Order 12044, Improving Government Regulations and the DoD Implementation Plan. This agenda reports on the areas under consideration in that review and on specific actions taken since the publication of the second agenda in the Federal Register issue of May 30, 1979 (44 FR 31148). Additionally the Army Corps of Engineers has undertaken a significant effort to review all of its civil works regulations—not just those published in this Agenda—in an effort to apply the basic philosophy of regulatory simplification to internal administrative publications.

FOR FURTHER INFORMATION CONTACT: Mr. J. B. Hudson, 202–697–6900 or write Office of the Administrative Assistant, OSA, Washington, D.C., 20310.

SUPPLEMENTARY INFORMATION: This agenda includes regulations which support the National Defense mission as well as the Civil Works activities of the Corps of Engineers published in titles 32, 33, and 36 of the Code of Federal Regulations. It should be noted that the agenda, does not include those civil works regulations 33 CFR Part 328, 33 CFR Part 329, and 36 CFR Part 327 (EC–1130–2–159) and 36 CFR Part 327 (ER–1130–2–411) that were recommended for deletion from the agenda in the last report (May 30, 1979).

Those civil works regulations codified in 33 CFR Parts 321 through 327 are a part of a set of regulations concerning the Army permit process for civil construction projects. Hence, the departure from the normal agenda format wherein a separate comment is published for each regulation. In this case it would obviously be redundant. With respect to these regulations, the last semiannual agenda anticipated publication of final rules by 30 September 1979. These rules are not now expected until January 1, 1980. Public comments during this extended period are also invited.

Accordingly, the following information is provided concerning Army amendments to the Code of Federal Regulations:

Department of the Army—Semiannual Agenda

[Period June 1, 1979—Nov. 30, 1979]

Part I—Status of Existing Regulations Reviewed (Agenda Nov. 30, 1978)

CFR No.	Title	Public comments and consideration	Final status
32 CFR Part 513	Assistance of Creditor by DA	Two comments received in response to Proposed Rule in 44 FR 45967, Aug. 6, 1979. After discussions between writers of comments and Army officials, the comments were withdrawn.	Final Rule published in 44 FR 55857, Sep. 28, 1979. Regulation dropped from agenda.
32 CFR Part 542	Schools and Colleges	One comment received in response to Proposed Rule in 43 FR 58832, Dec. 18, 1978. Comment included in Final Rule.	Final Rule published in 44 FR 51219, Aug. 31, 1979. Regulation dropped from agenda.
32 CFR Part 562	Reserve Officers' Training Corps	One comment received in response to Proposed Rule in 43 FR 59519, Dec. 21, 1978. Comment included in Final Rule. Additional comment received in Oct. 1979 after final rule was published on Aug. 31, 1979. An amendment will be published in the Federal Register if regulation is changed based on the comment.	Final Rule published in 44 FR 51221, Aug. 31, 1979. Regulation dropped from agenda.
32 CFR Part 552	Regulations Affecting Military Reservations		
32 CFR 552.16	Real Estate Claims Founded Upon Contract	No comments received in response to Proposed Rule in 44 FR 7183, Feb. 6, 1979.	Final Rule published in 44 FR 37911, June 29, 1979. Regulation dropped from agenda.
32 CFR 552.18	Administration—Post Commander	Public comment not considered necessary.	Final Rule published in 44 FR 7948, Feb. 8, 1979. Regulation dropped from agenda.
32 CFR 552.30 through 552.74	Acquisition of Real Property and Interests Therein	No comments received in response to Proposed Rule in 43 FR 59328, Dec. 19, 1978.	Estimated date for publication of Final Rule is Dec. 31, 1979.
32 CFR 564.37 and 564.38	National Guard Regulations on Medical Care	Public comment not considered necessary.	Final Rule published in 44 FR 16385, Mar. 19, 1979. Regulation dropped from agenda.
32 CFR 564.41	Burial	Public comment not considered necessary.	Final Rule published in 44 FR 18489, Mar. 28, 1979. Regulation dropped from agenda.
32 CFR Part 571	Recruiting and Enlistments	Same as 32 CFR 564.	Final Rule published in 44 FR 9745, Feb. 15, 1979. Regulation dropped from agenda.
32 CFR Part 574	U.S. Soldiers' and Airmen's Home	Same as 32 CFR 564.	Final Rule published in 44 FR 10981, Feb. 26, 1979. Regulation dropped from agenda.
32 CFR Part 575	Admission to the U.S. Military Academy	Same as 32 CFR 564.	Final Rule published in 44 FR 11781, May 2, 1979. Regulation dropped from agenda.

Part I—Status of Existing Regulations Reviewed (Agenda May 30, 1979)

32 CFR Part 503	Apprehension and Restraint	Revision will be published as Proposed Rule	Pending outcome of proposed Senate Bill 1221, 96th Congress.
32 CFR Part 534	Military Court Fees	Regulation will be published as a Final Rule	Revision is being coordinated. Estimated date of publication is December 1979.
32 CFR Part 536	Claims Against the United States	Regulation has been reviewed and will be published as a Final Rule.	Final Rule will be published not later than March 1980.
32 CFR 536.30 through 536.35	Military Absentee and Deserter Apprehension Program.	Revision will be redesignated Part 630 and published as a Proposed Rule.	Proposed Rule will be published in November 1979.
32 CFR Part 552	State and Local Taxation of Lessee's Interest in Wherry Act Housing.	Regulation has been reviewed and publication in the Federal Register is not considered necessary.	Regulation dropped from agenda.
32 CFR Part 645	Real Estate Annexation	To be published as a Proposed Rule	Proposed Rule will be published in November 1979.
32 CFR Part 657	Facilities Engineering Pest Control Services	To be published as Final Rule	Review is being coordinated. Estimated date for publication is March 1980.
32 CFR Part 579	Standard of Conduct for DA Personnel	Regulation duplicates information published for all DoD in 32 CFR 40. Therefore 32 CFR 579 is deleted.	Final Rule published in 44 FR 61178, Oct. 24, 1979. Regulation dropped from agenda.
32 CFR Part 581	Physical Evaluation for Retention, Retirement, or Separation.	AR 635-40 has been revised and publication of the AR in the Federal Register is not considered necessary.	Regulation dropped from agenda.

Department of the Navy

Improving Government Regulations; Semiannual Agenda

ACTION: Publication of the Department of the Navy third Semiannual Agenda of regulations as required under E.O. 12044 and implemented under the DoD plan for Improving Government Regulations.

SUMMARY: The Department of the Navy published its first regulatory review agenda in November 1978. Since Navy regulations are primarily directed toward supporting the Navy mission and its people, they do not normally impact upon the public directly. Agenda regulatory reviews contain regulations which are primarily "in-house" in nature and not under the criteria expressed in Executive Order 12044 or the DoD plan. In keeping with the spirit and intent of the Executive Order, the Navy will continue to publish regulations that may be of interest to the general public and provide an opportunity for public comment.

The Department of the Navy has promulgated several other regulatory reform programs covering the full spectrum of administrative requirements. A Navy directive was issued which instituted a "sunset" clause directing that no reporting requirement shall exceed two years and one-time reports of less than two years shall cite an expiration date.

Each Navy command issuing directives must conduct at least an annual review to ensure:

(a) That the system's requirements and standards are being met; and

(b) That all effective directives which the organization has issued are reviewed with an eye toward canceling, updating, revising, or consolidating, as appropriate.

A recent review of directives, reports, forms, and publications by the Chief of Naval Operations has resulted in 508 cancellations of administrative issuances.

The goals and objectives of the Executive Order 12044 and the DoD plan for Improving Government Regulations are being actively pursued throughout the Department of the Navy.

FOR FURTHER INFORMATION CONTACT: For further information concerning Agenda items or the overall Department of the Navy Regulatory Reform program contact Ms. Alcinda Wenburg, telephone 202-695-1921 or write; Department of the Navy, Chief of Naval Operations, OP-09B15, Pentagon, Washington, D.C. 20350.

Part II—Regulations Under Development (Previously Reported on May 30, 1979 Agenda)

CFR No.	Description	Legal basis	Status
32 CFR Part 504	AR 190-xx, Obtaining Information from Financial Institutions.	12 U.S.C. 3401 (Right to Financial Privacy Act of 1978).	Final DoD Directive has not been published. AR will be written and staffed after DoD Directive is approved and signed.

The Department of the Army has no regulations under review or being developed which would require a regulatory analysis in accordance with the criteria established by EO 12044 and the DoD plan for Improving Government Regulations.

Part III—Civil Works Regulations Under Review

CFR No.	Title	Public comments and consideration	Status
33 CFR Part 321	Permits for Dams and Dikes in Navigable Waters of the United States.	These regulations are a "set" concerning the Army permit process for civil construction projects. New draft regulations are being staffed prior to being released for public comment. Meetings with Federal agencies will be held prior to publication for public comment.	Final Rules to be published by January 1980.
33 CFR Part 322	Permits for Structures of Work in or Affecting Navigable Waters of the United States.		
33 CFR Part 323	Permits for Discharges of Dredged or Fill Material into Waters of the United States.		
33 CFR Part 324	Permits for Ocean Dumping of Dredged Material.		
33 CFR Part 325	Processing of Department of Army Permits.		
33 CFR Part 326	Enforcement.		
33 CFR Part 327	Public Hearings.		

Part IV—Civil Works Regulations Under Development

CFR No.	Title	Public comments and consideration	Status
33 CFR Part 325	Historic Preservation (Appendix C under Development).	Draft regulations jointly structured by Army and the President's Council on Historic Preservation. Public comments will be solicited.	Proposed rules to be published in November 1979.

Department of the Navy—Semiannual Agenda

[Period May 31, 1979, through Nov. 30, 1979]

Part I.—Status of Regulations Previously Reviewed (Agenda Nov. 30, 1978)

CFR No.	Title	*Public Comments and Consideration	Status	Contact officer
32 Part 705	Public Affairs Regulations	Published as final rule	Revision appeared in the FEDERAL REGISTER on Feb. 1, 1979.	LCDR W. S., Turner, OI, Tel. 697-7371.
32 Part 714	Officer Personnel	Recommended for deletion	Notice of deletion appeared in FEDERAL REGISTER on April 24, 1979.	Mr. Minick, NMPC, Pers 14E, Tel. 694-3613. Capt. Cope, HQSP, Tel. 694-2580.
32 Part 715	Support of Dependents and Paternity Complaints.	Published as final rule	Revision appeared in the FEDERAL REGISTER on July 19, 1979.	Mr. Minick, NMPC, Pers 14E, Tel. 694-3613.
32 Part 716	Death Gratuity	Published as final rule	Revision appeared in the FEDERAL REGISTER on May 2, 1979.	Mr. Minick, NMPC, Pers 14E, Tel. 694-3613. Capt. Cope, HQSP, Tel. 694-2580.

Department of the Navy—Semiannual Agenda—Continued

[Period May 31, 1979, through Nov. 30, 1979]

Part I.—Status of Regulations Previously Reviewed (Agenda Nov. 30, 1978)

CFR No.	Title	*Public Comments and Consideration	Status	Contact officer
32 Part 718	Missing Person Act	Published as final rule	Revision appeared in the FEDERAL REGISTER on April 16, 1979.	Mr. Minick, NMPC, Pers 14E, Tel. 694-3613. Capt. Cope, HQSP, Tel. 694-2580.
32 Part 725	Disposition of Cases Involving Physical Disability.	To be published as final rule	Under revision due to change in basic requirements.	LCDR M. W. Kirkpatrick, NCPB, Tel. 696-4366.
32 Part 729	Navy and Marine Corps Military Personnel Security Program.	Published as final rule	Revision appeared in the FEDERAL REGISTER on April 24, 1979.	Mr. Minick, NMPC, Pers 14E, Tel. 694-3613.
32 Part 730	Administrative Discharges and Related Matters Concerning Separations from the Naval Service.	To be published as final rule	Revision will be submitted to the office of the Federal Register by mid-November.	Mr. Minick, NMPC, Tel. 694-3613.
32 Part 744	Policies and Procedures for the Protection of Proprietary Rights in Technical Information Proposed for Release to Foreign Governments.	Published as final rule	Revision appeared in the FEDERAL REGISTER on May 29, 1979.	Mrs. A. Wenberg, OPNAV, Tel. 695-1921.
32 Part 751	Personnel Claims	Published as final rule	Revision appeared in the FEDERAL REGISTER on June 13, 1978.	CDR Walsh, NJAG, Tel. 694-3555.

*No public comments received.

Status of Regulation Previously Under Development (Agenda May 30, 1979)

CFR No.	Title	Public comments and consideration	Status	Contact officer
32 Part 724	Naval Discharge Review Board Manual	To be published as final rule	Revision will be submitted to the Office of the Federal Register by mid-November.	LCDR Kirkpatrick, NCPB, Tel. 696-4366.

Part II.—Regulations Under Development

CFR No.	Title	Reason for review	Legal basis	Regulatory analysis	Closeout comment date
32 Pt. 701.1	Availability to the public of Department of the Navy Records.	Revision to update policies and procedures.	5 U.S. Code 552, as amended by Pub. L. 93-502 and DOD DIR 5400.7 of 23 June 1967.	None required	Unknown at this time.
32 Pt. 701.100	Personal Privacy and Rights of Individuals Regarding their Personal Records.	Revision to update policies and procedures.	5 U.S. Code 552a, and DOD DIR 5400.11 of 4 August 1975.	None required	Unknown at this time.

Part III.—Regulations Requiring Regulatory Analysis

The Department of the Navy has no regulations previously reviewed or under development this period requiring regulatory analysis.

Department of the Air Force

Improving Government Regulations; Semiannual Agenda

ACTION: Publication of the Department of the Air Force third Semiannual Agenda of significant regulations as required under Executive Order 12044 and implemented under the DoD plan for Improving Government Regulations.

SUMMARY: The third Semiannual Agenda lists regulations currently under review or development within the Department of the Air Force. The regulations are considered non-significant in nature and do not impact upon the public as defined under the Executive Order criteria, but provides to the public reform currently underway within the Air Force. In keeping with the goals and objectives of the Executive Order and the DoD plan for Improving Government Regulations, the Department requires regulations be reviewed annually to determine their status; to ensure they are essential to the efficient administration and operation of the Air Force; and that they are consistent with existing laws and policies. This review covers all internal regulations as well as those defined under Executive Order 12044. Normally Air Force regulations do not have a major impact on the public; therefore, a regulatory analysis review has not been required on those regulations under review or development.

FOR FURTHER INFORMATION CONTACT: Where a contact person is indicated, contact that individual. For other information concerning the agenda, contact Mrs. Carol M. Rose, telephone 202-697-1861 or write: Department of the Air Force, AS/DASJR, Pentagon, Washington, D.C. 20330.

Department of the Air Force; Semiannual Agenda

[31 May-30 November 1979]

Part I.—*Status of Regulations Previously Reviewed*

CFR No.	Title	Final status
32 CFR Part 802	Air Force Technical Order System	Published as final rule in FEDERAL REGISTER, 27 Sep 79 (44 FR 55563).
32 CFR Part 806	Air Force Freedom of Information Act Program	Publication of this regulation as final rule has been stopped. A draft DOD Directive 5400.7, which we must supplement, is in coordination. Air Force will supplement the DOD Directive when it is published.
32 CFR Part 806b	Air Force Privacy Act Program	Published as final rule in FEDERAL REGISTER, 18 April 1979 (44 FR 23067).
32 CFR Part 813	Schedule of Fees for Copying and Searching Records and Other Documentary Material.	Revision was published 9 Oct 79. Estimated date for publication in the FEDERAL REGISTER is November 1979.
32 CFR Part 865	Personnel Review Boards	Date for publishing this regulation will depend on when DOD Directive, which is currently under revision, is published.

Department of the Air Force; Semiannual Agenda

[31 May-30 November 1979]

Part I.—*Status of Regulations Previously Reviewed*

CFR No.	Title	Final status
32 CFR Part 901	Appointment ot the U.S. Air Force Academy	Published as final rule in the FEDERAL REGISTER, 3 Oct 79 (44 FR 56930).
32 CFR Part 903	Air Force Academy Preparatory School	Published as final rule in the FEDERAL REGISTER, 16 Aug 79 (44 FR 47929).
32 CFR Part 920	Standards of Conduct	Published as final rule in the FEDERAL REGISTER, 8 May 79 (44 FR 26871).
32 CFR Part 953	Violations of Public Trust in Contract, Procurement, and Other Matters.	Estimated date of publication of this regulation is early 1980.
32 CFR Part 988	Weather Modification	Published as a proposed rule in the FEDERAL REGISTER, 5 Mar 79 (44 FR 12064), and as a final rule on 20 Sep 79 (44 FR 54479).
32 CFR Part 989	Environmental Impact Analysis Process	Published as a proposed rule in the FEDERAL REGISTER, 26 Jul 79 (44 FR 44119). Draft AFR 19-2 will be used by Air Force agencies as interim guidance pending publication of the final rule which is anticipated to take place in November 1979.

Part II.—*Regulations Under Development or Review*

CFR No.	Title	Purpose	Legal basis	Regulatory analysis yes/no	Contact person
32 CFR (part No. has not been assigned).	Submitting Material for Publication in the FEDERAL REGISTER.	Give guidance on submitting regulations and notices affecting the public for publication in the FEDERAL REGISTER.	DOD directive 5400.9	No	Carol M. Rose, AS/DAS JR 697-1861.
32 CFR (part No. has not been assigned).	Air Force Energy Conservaton and Management.	Complete revision of the existing regulation which incorporates latest DOD guidance on energy conservation and management. Provides policy and procedures concerning all facets of the Air Force Energy Program.	DOD directives 5126.46, 4170.10, and DOD instruction 4170.9.	No	Major Graf Horn, AF/LEYF 695-0461.
32 CFR (part No. has not been assigned).	Real Property Management, Acquisition of Real Property.	Procedure for the Air Force to acquire needed real property for its operations.	DOD directives 4165.6, 4165.16, and DOD instruction 4165.12.	No	Mr. John B. Bortnyck, AF/LEER 767-4031.
32 CFR Part 842	Claims Manual	Complete revision of Air Force property and personal injury regulations and implements changes in statutes since the last revision.	10 USC 939; 1089(f); 2731-2737; 9801-9804, 9806; 28 USC 2671-2680; 31 USC 340-343; 951-953; 32 USC 715; and 42 USC 2651-2653.	No	Mr. Van Nuys, AF/ JACC 693-5830.
32 CFR Part 954	Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.	Establishes Air Force policy, limitations, procedures and operational guidance pertaining to the collection, processing, storing, and dissemination of information concerning persons and organizations not affiliated with the Department of Defense.	DOD Directives 5200.26 and 5200.27.	No	Major William C. Goforth, AFOSI/ XPX 693-6820.
32 CFR Part 880 Subpart A	Medical, Dental and Veterinary Care from Civilian Sources.	Provides guidance on the use of supplemental care versus contract health care services.	10 USC 1071-1087	No	Major Martin E. Zizzi, AF/SGHC 767-5058.

[FR Doc. 79-36595 Filed 11-29-79, 8:45 am]
BILLING CODE 3810-70-M

PANAMA CANAL

35 CFR Part 9

Organization, Functions and Availability of Information—Panama Canal Company

AGENCY: Panama Canal Commission.

ACTION: Proposed rule.

SUMMARY: The Freedom of Information Act requires each agency to promulgate regulations, pursuant to notice of public comment, specifying a uniform schedule of fees for document search and duplication done in response to a request under that Act from a member of the public (5 U.S.C. 552(a)(4)(A)). The predecessor of this agency, the Panama Canal Company, published its fee schedule in the Federal Register of March 17, 1975 (40 FR 12071). The Panama Canal Commission is now proposing to amend that fee schedule by increasing the charges for certain services to reflect the current direct costs of those services, and by specifying, for the first time, uniform fees for other services, such as converting microfilm to paper copy, duplication of tape recordings, and duplication of photographs. The text of the proposed amended fee schedule, 35 CFR 9.5, appears below.

DATES: All comments received on or before December 21, 1979 will be considered. The proposed effective date for this amendment is December 31, 1979.

ADDRESS: Comments should be addressed to: Panama Canal Commission, Attn: Mr. K. E. Goldsberry, Chief, Administrative Services Division, APO Miami 34011.

FOR FURTHER INFORMATION CONTACT: Mrs. Hazel M. Murdock, Assistant to the Secretary, Panama Canal Commission, Suite 312, Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004. (Telephone: 202/724-0104).

SUPPLEMENTARY INFORMATION: Pursuant to the Panama Canal Act of 1979, Pub. L. 96–70, the statute implementing the Panama Canal Treaty of 1977, the Panama Canal Company was replaced, on October 1, 1979, by a new United States Government agency, the Panama Canal Commission, which will operate the waterway until the termination of the Treaty on December 31, 1999.

Text of proposed revision of § 9.5: The text of the proposed amendment follows:

§ 9.5 Fees for Freedom of Information Act requests.

(a) The following are the fees you will be charged by the Panama Canal Commission for searching for and reproducing the records you request.

(1) Search for records: $5.50 per hour for searches conducted by clerical personnel, and $17.50 per hour for searches conducted by supervisory or professional personnel.

(2) Searches requiring computers: $130.00 for the first two hours (or fraction of the first two hours): $65.00 for each additional hour.

(3) Copying: $0.09 per page for the first copy of a record. For additional copies, you will be charged the official Panama Canal Commission tariff for copying.

(4) Converting microfilm to paper copy: $0.09 per page for the first copy of a record. For additional copies, you will be charged the official Panama Canal Commission tariff rate for copying.

(5) Duplication of tape recordings, when tape is furnished by the agency: 60-minute tape, $1.95 per tape; 90-minute tape, $2.75 per tape; and 120-minute tape, $3.70 per tape. If you supply the tape, there will be no charge for duplication.

(6) Duplication of photographs: Black and white, up to 8" x 10", $1.50 per print; color, up to 8" x 10", $2.50 per print.

(7) Other services: If there is no specific fee listed in this section for a service necessary for handling your request, you will be charged the official agency tariff for that service. If no tariff exists for that service, the Agency Records Officer is authorized to charge the direct cost to the Commission of that service.

(b) If you wish to request a waiver or reduction of fees, you must do so in writing. The official granting or denying your request or appeal may waive or reduce the fees if the official decides that providing the records you request would primarily benefit the general public.

(c) The Commission may require you to pay any fees charged before the agency will make available to you the records you requested. If you have not paid the fees charged for processing a request, the Commission will not process any subsequent requests you make.

(d) The Commission may charge you fees for searching for the records you request even if no records are found. You may also be charged if records are found but are determined to be exempt from disclosure to you because they fall within one of the exceptions to availability listed in the Freedom of Information Act.

(e) If the records you request are not stored on the Isthmus of Panama, the special costs of returning them to the Isthmus of Panama for review will be added to the search costs.

(f) If your request is expected to involve fees of more than $50, the Commission will not treat your request as having been received until:

(1) The Commission has sent you a written notification of the estimated fees; and

(2) You agree in writing to pay at least the estimated fees; and

(3) You pay part of the estimated fees in advance, if the agency requires such a deposit before it will begin to search for the records you have requested.

Dated: November 27, 1979.

Thomas M. Constant,

Secretary, Panama Canal Commission.

[FR Doc. 79-36994 Filed 11-29-79; 8:45 am]

BILLING CODE 3640-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

Improving Government Regulations; Agenda of Significant Regulatory Activity

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the significant regulatory actions that GSA plans for the 6-month period from mid-November 1979 to mid-May 1980. This agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, March 24, 1978). GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the early stages of the rulemaking process.

FOR FURTHER INFORMATION CONTACT: John T. Gilmartin, Director, Information Management Division (202–566–0857).

SUPPLEMENTARY INFORMATION: On December 4, 1978, GSA published its final report on implementation plans for Executive Order 12044 at 43 FR 56728. As explained in the report, GSA will publish a semiannual agenda of significant regulatory activity during May and November of each year. The agenda lists, for each of GSA's services and staff offices, new significant regulations that are being considered, changes that are planned to existing significant regulations, significant regulations that will be reviewed during the upcoming 6-month period, and the status of items from the previous agenda.

Dated: November 21, 1979.

Ray Kline,

Acting Administrator of General Services.

National Archives and Records Service

A. New Regulations.

No new significant regulations are being considered.

B. Changes to Existing Regulations

1. Public Use of Archives and FRC Records (41 CFR 105–61.1)—in which only § 105–61.104, Access to National Security Information, has been defined as significant—was revised and published as a final rule at 44 FR 18498 (Mar. 28, 1979). This regulation is currently undergoing further revision.

a. *Need for change:* Executive Order 12065, National Security Information, mandated new declassification procedures.

b. *Legal basis:* Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. *Contact point:* Adrienne C. Thomas, Director, Planning and Analysis division (NAA) (202–523–3214).

d. *Regulatory analysis:* Will not be prepared.

2. Public Use of Donated Historical Materials (41 CFR 105–61.2) has been partially revised and was published at 44 FR 18498 (Mar. 28, 1979). Other revisions are currently being made.

a. *Need for change:* Executive Order 12065, National Security Information, mandated new declassification procedures that must be cited.

b. *Legal basis:* Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c)).

c. *Contact point:* Richard A. Jacobs, Deputy Assistant Archivist, Office of Presidential Libraries (NL) (202–523–3073).

d. *Regulatory analysis:* Will not be prepared.

Regulations Scheduled for Review

No significant regulations are presently being reviewed.

D. Status of Agenda Items Published on May 18, 1979 (44 FR 29368)

See items B1 and B2, above.

Office of Resources and Organization

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

No significant regulations are scheduled to be changed.

C. Regulations Scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Published on May 18, 1979 (44 FR 29368)

1. New regulations. Procedures for implementation of section 504 of the Rehabilitation Act of 1973.

a. A proposed rule was published on October 30, 1979 (44 FR 62298).

b. *Contact point:* Linda Goodwin, Office of Civil Rights (202–566–1096).

Transportation and Public Utilities Service

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

1. Federal Travel Regulations (41 CFR Part 101–7)—to revise per diem and actual subsistence provisions (parts 7 and 8 of chapter 1).

a. *Need for change:* To implement the lodgings-plus method of computing travel costs on a worldwide basis.

b. *Legal basis:* Executive Order 11609 (July 22, 1971) and the Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975).

c. *Contact point:* Audrey Rish, Federal Travel Managment Division (202–557–8510).

d. *Regulatory analysis:* Under consideration.

2. Federal Travel Regulations (41 CFR Part 101–7)—to revise high rate geographical areas and reimbursement for the use of privately owned conveyances.

a. *Need for change:* Will be based on investigations by GSA of the cost of travel and cost studies on operating privately owned conveyances.

b. *Legal basis:* Executive Order 11609 (July 22, 1971) and the Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975).

c. *Contact point:* Audrey Rish, Federal Travel Management Division (202–557–8510).

d. *Regulatory analysis:* Under consideration.

C. Regulations Scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Published on May 18, 1979 (44 FR 29368)

No items were listed on the previous agenda.

Automated Data and Telecommunications Service

No significant regulatory actions are planned.

Federal Property Resources Service

No significant regulatory actions are planned.

Federal Supply Service

No significant regulatory actions are planned.

Office of Acquisition Policy

No significant regulatory actions are planned.

Office of Management, Policy, and Budget

No significant regulatory actions are planned.

Office of General Counsel

No significant regulatory actions are planned.

Public Buildings Service

No significant regulatory actions are planned.

[FR Doc. 79-36899 Filed 11-29-79; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Tribal Purchase of Interest Under Special Statutes, Including Hearings and Appeals; Extension of Comment Period

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Extension of comment period on proposed rule.

SUMMARY: This notice extends the time in which written comments on the proposed revisions to Departmental regulations implementing the tribal purchase statutes (cited below) may be submitted.

DATE: Comments must be received on or before January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Sara Russell, Hearings Division, Office of Hearings and Appeals (703) 557–9200.

SUPPLEMENTARY INFORMATION: 43 CFR Part 4 Subpart D, contains in sections 4.300 through 4.317 the Department's regulations which implement the tribal purchase statutes (the Act of December 31, 1970, Pub. L. 91–627, 84 Stat. 1874, 25 U.S.C. 607, amending section 7 of the Act of August 9, 1946, 60 Stat. 969, 25 U.S.C. 607; the Act of August 10, 1972, Pub. L. 92–377, 86 Stat. 530; and the Act of September 29, 1972, Pub. L. 92–443, 86 Stat. 744).

On October 9, 1979, proposed revisions to these regulations were published in Federal Register at 44 FR 57948. The public comment period established was 60 days from the date of publication (December 10, 1979).

On November 20, 1979, the Yakima Indian Tribe of Washington requested an extension of the comment period in order to formalize the comments made orally at a meeting held in Arlington, Virginia on November 1, 1979, between this office and some members of the Tribe. This office has decided that in order to receive the written comments from the Yakima Tribe, the 45-day extension requested will be given. Therefore, comments on the revisions must be received on or before January 24, 1980.

Dated: November 27, 1979.

Ruth R. Banks,

Director, Office of Hearings and Appeals.

[FR Doc. 79-36970 Filed 11-29-79; 8:45 am]
BILLING CODE 4310-10-M

FEDERAL MARITIME COMMISSION

46 CFR Part 547

[Docket No. 79-12]

Improvements in Prehearing and Discovery Procedures

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: The Commission has determined that this proceeding which was initiated by Advance Notice of Proposed Rulemaking of March 13, 1979 (44 FR 14582) should be discontinued because the comments received demonstrate that there is no consensus that the Commission's discovery rules need amendment. However, the Commission will consider whether certain comments justify the institution of a rulemaking proceeding and is providing appropriate explanations to eliminate particular misunderstandings about some of the rules.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal

Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573 (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by Advance Notice of Proposed Rulemaking which was published in the Federal Register on March 13, 1979 (44 FR 14582). The purpose of the proceeding was to elicit comments to determine if there is a need to amend the Commission's rules relating to prehearing inspection and discovery in order to improve efficiency and eliminate undue delay in the conduct of formal proceedings. The Commission was aware that special committees of both the American Bar Association and the Judicial Conference of the United States had conducted studies and recommended that certain amendments be made to the federal rules of discovery followed by the United States district courts to which the Commission's discovery rules, in large measure, conform.

The comments generally demonstrate that there is no consensus that further amendments to the Commission's rules are necessary at this time. Furthermore, we note that the special committee of the Judicial Conference has withdrawn most of the recommendations relating to discovery and that the remaining recommendations are still subject to further consideration before they may be presented to the Supreme Court.[1] Consequently it appears that there is no compelling reason to revise our discovery rules at this time. However, the Commission is interested in exploring any idea which may improve the discovery process and reduce delay in its proceedings. Some of the comments relating to the need for earlier rulings and elimination of unnecessary pleadings, in our opinion, deserve further consideration as does one of the remaining recommendations of the special committee of the Judicial Conference concerning early discovery conferences. Furthermore, because certain comments expressed concern about the operations and effects of certain of the Commission's rules, which comments were apparently based upon misunderstandings of the particular rules involved, the Commission believes that explanatory or clarifying remarks would be helpful.

One particular area of concern which appeared in the comments relates to the possibility that the present prehearing inspection and discovery rules might interfere with the expedited schedules mandated by Public Law 95-475, 92 Stat. 1494 (1978), which amended the Intercoastal Shipping Act, 1933. Matson Navigation Company, which commented on this problem, recommends that we amend our rules to provide that discovery procedures be "available in proceedings arising under Section 3 of the Intercoastal Shipping Act, 1933, only to the extent authorized by the Presiding Administrative Law Judge in his discretion." The Commission agrees with Matson that care must be taken to ensure that discovery procedures are not misused so as to create delay and prevent the prompt conclusion of the hearing and other phases of rate cases set forth in the law and pertinent Commission regulation (Rule 67, 46 CFR 502.67). However, the regulations of the Commission already embody the controls which Matson wishes to have inserted by way of amendment. For example, Rule 67(g), 46 CFR 502.67(g), states that the "Administrative Law Judge may employ any other provision of the Commission's Rules of Practice and Procedure, not inconsistent with this section, in order to meet this objective" (i.e., to complete a hearing within sixty days after the proposed effective date of the tariff changes and submit an initial decision within one hundred twenty days after that date). The Commission's rules contain numerous provisions elsewhere which authorize the presiding judge to curtail unnecessary discovery. (See, e.g., Rules 201(b)(2), 201(b)(3), 204(b), 206(b).) Moreover, if necessary to ensure that the proceeding progresses expeditiously, the presiding judge is authorized to waive any discovery rule. (See Rule 10, 46 CFR 502.10.)

Another problem area which appears to be based upon a misunderstanding of the Commission's rules relates to the requirement in Rules 206(a) and 207(c) that a party filing a motion seeking an order compelling answers to interrogatories or requests for production of documents submit an affidavit certifying that counsel have conferred in a good-faith effort to resolve their differences. The Committee on Practice and Procedure of the Maritime Administrative Bar Association (MABA) states that conferences among counsel are seldom successful and most often waste time and suggests, furthermore, that if such conferences are to be held, they should take place prior to the time of filing motions when there is still some likelihood of agreement among counsel. These comments misconceive the purpose of the requirement and the procedure to be followed.

The requirement that counsel meet in an effort to resolve differences prior to seeking a formal order is also imposed in several district courts and has salutary purposes. It recognizes that counsel have a duty to cooperate in an effort to fulfill the purposes of all discovery rules, namely, to seek narrowing of issues, avoidance of unnecessary trial-type hearings, and the elimination of surprise. Considering the broad scope and salutary purposes of discovery, the Commission does not believe that discussions among counsel conducted in a good-faith effort to achieve the above purposes should be a waste of time. On a number of occasions in formal proceedings, furthermore, counsel have been able to reach agreement in discovery matters without taking up the time of the Commisssion or presiding judge with formal motions and replies. The requirement that counsel certify that they have sought agreement informally and that they file an affidavit not later than the date set for replies to motions to compel answers does not mean, as MABA seems to believe, that such informal discussions among counsel can only take place after the motions are filed. On the contrary, the rules are intended to encourage these discussions as early as possible. Affidavits certifying that further discussions will be futile can therefore be filed at any time that such a fact becomes apparent (e.g., at the time counsel files a motion to compel answers) so long as they are not filed after the date set for the filing of replies to the motion.

The commentators have given careful thought to other possible problem areas which the Commission identified (e.g., the broad scope of discoverty, the need for written justification for discovery, broader use of depositions, limitation on number of interrogatories). However, as noted above, there is no consensus that there really are problems in these areas and if some commentators believe that problems do exist, there is no agreement as to the remedy. Moreover, it appears that the Commission's rules are exceedingly flexible so that solutions to many if not all of the problems discussed can be devised by presiding judges and the parties as these problems arise.

Accordingly, the Commission is discontinuing this proceeding but will give further consideration to particular comments and, if we believe that they

[1] See Revised Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, February 1979, Vol. 461-No. 2, Federal Supplement.

have merit, will institute an appropriate rulemaking proceeding.

Francis C. Hurney,

Secretary.

[FR Doc. 79-36892 Filed 11-29-79; 8:45 am]

BILLING CODE 6730-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 8, 17 and 31

Excess Personal Property Exchange or Sale of Non-Excess Personal Property and Contract Cost Principles and Procedures Applicability; Availability and Request for Comments on Draft Federal Acquisition Regulation

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of Availability and request for comment on draft Federal Acquisition Regulation.

SUMMARY: The Office of Federal Procurement Policy is making available, for public and Government agency review and comment, a segment of the draft Federal Acquisition Regulation regarding excess personal property, exchange or sale of non-excess personal property, and contract cost principles and procedures applicability.[1] Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before January 30, 1980.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William J. Maraist, Deputy Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, NW., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Strat Valakis (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purpose of the FAR is to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following subparts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.

Part 8—Required Sources of Supplies and Services

Subpart 8.1—Excess Personal Property.

This subpart describes the requirements imposed on government agencies to make use of excess personal property, prior to initiating contract actions, as a first source of need fulfillment. It also covers information availability, and GSA assistance to obtain unreported property.

Part 17—Special Contracting Methods

Subpart 17.3—Exchange or Sale of Nonexcess Personal Property

This subpart prescribes policies and procedures for the exchange or sale of nonexcess personal property as authorized by 40 U.S.C. 481(c), when acquisition of replacement property is sought. Contracting Officer requirements are covered, as are nonapplicable item categories, and restrictions and limitations. The appropriate solicitation provision which will appear in Part 52 is also included.

Part 31—Contract Cost Principles and Procedures

Sections 31.000 and 31.001 provide, respectively, scope of part and definitions of general use in reviewing and using Part 31.

Subpart 31.1—Applicability

This subpart presents material which establishes the applicability of principles and procedures found in subsequent subparts of Part 31. It provides objectives, use of cost principles with fixed-price contracts and application by contract category—commercial organizations, educational institutions, construction, facilities, and State and local governments. The subpart includes treatment and use of negotiated advance agreements to assure uniform consideration of allowability and reasonableness of special or unusual costs.

Dated: November 27, 1979.

LeRoy J. Haugh,

Associate Administrator for Regulations and Procedures.

[FR Doc. 79-36972 Filed 11-29-79; 8:45 am]

BILLING CODE 3110-01-M

[1] Forms (Proposed FAR in three column spread sheet format) filed as part of the original document.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Approval and Partial Disapproval of Fishery Management Plan Amendments

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Approval and Partial Disapproval of Fishery Management Plan Amendments.

SUMMARY: Several amendments to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) are approved by the Assistant Administrator for Fisheries. Two proposed amendments are partially disapproved. Proposed regulations to implement the approved amendments were published in the Federal Register for public review and comments on November 9, 1979 (44 FR 65372).

The amendments extend the FMP now in effect for two years by establishing optimum yield and quotas for 1980 and 1981, with an increase in each year of the optimum yield (OY) for ocean quahogs. The amendments also provide for a make-up day for surf clam fishing time lost to bad winter weather, establish a separate management area and management measures for the New England fishery and close two areas to fishing for surf clams and ocean quahogs. The two management measures which were not approved were proposals which would have: (1) Established a 4½ inch minimum landing size for surf clams; and (2) required that those vessels eligible for a surf clam permit apply for it by February 15, 1980, and land a minimum amount of surf clams by April 15, 1980.

DATES: Comments on this amendment and the regulations are invited until December 29, 1979, and will be considered when National Marine Fisheries Service (NMFS) prepares final regulations implementing the amendments. Final regulations are expected to become effective January 1, 1980.

ADDRESS: Send comments to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235. Mark "Surf Clam Comments" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson Jr., Regional Director,

Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: A supplemental environmental impact statement has been filed with the Environmental Protection Agency.

Signed at Washington, D.C., this 13th day of November 1979.

Jack W. Gehringer,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Amendment No. 2 for the Surf Clam and Ocean Quahog Fisheries, Fishery Management Plan

November, 1979.

Mid-Atlantic Fishery Management Council in Cooperation With the National Marine Fisheries Service and the New England Fishery Management Council

Abbreviations and Definitions Used in This Document

bushel—1.88 cubic feet
CFR—Code of Federal Regulations
cm—centimeter
cu.—cubic
EIS—Environmental Impact Statement
fathom—6 feet
FCMA—Fishery Conservation and Management Act
FCZ—Fishery Conservation Zone
FMP—Fishery Management Plan
g—gram
GRT—gross registered ton
ICNAF—International Commission for the Northwest Atlantic Fisheries
in—inch
km—kilometer
knot—a unit of speed of one nautical mile (about 1.1 statute miles) per hour
m—meter
mm—millimeter
mt—metric ton=2204.6 pounds
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
OY—Optimum Yield
PMP—Preliminary Fishery Mangement Plan
SA—Subarea or Statistical Area
Secretary—Secretary of Commerce
TALFF—Total Allowable Level of Foreign Fishing
1 bushel of offshore surf clams=17 pounds of meats
1 bushel of ocean quahog=10 pounds of meats
<—less than
≤—less than or equal to
>—greater than
≥—greater than or equal to

I. Acknowledgments

The Council wishes to acknowledge the assistance of the Surf Clam and Ocean Quahog Subcommittee of the Scientific and Statistical Committee and the Surf Clam and Ocean Quahog Advisory Subpanel in the preparation of this amended FMP. In addition, Steven Murawski of the Northeast Fisheries Center, Joseph J. Mueller and Bruce Nicholls of the NMFS, and Joel MacDonald of the NOAA Office of General Counsel rendered significant assistance to the preparation of this FMP.

II. Summary

The original management plan for the surf clam and ocean quahog fisheries of the northwestern Atlantic Ocean was approved by the Secretary of Commerce in November, 1977, for the period through September, 1979. Amendment No. 1 to the FMP extended it through December 31, 1979, and revised reporting requirements to bring them in compliance with the amended FCMA. This Amendment No. 2 would extend the FMP through the end of calendar year 1981.

The objectives of the FMP remain unchanged as a result of Amendment No. 2 and are to:

1. Rebuild the declining surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch from 1960 to 1976.

2. Minimize short-term economic dislocations to the extent possible consistent with objective 1.

3. Prevent the harvest of ocean quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield.

The management unit for this FMP remains unchanged and is all surf clams (*Spisula solidissima*) and all ocean quahogs (*Arctica islandica*) in the Atlantic FCZ.

Based on a review of comments made at the public hearings and letters received during the review period, and on the recommendations of the Council's Surf Clam and Ocean Quahog Advisory Subpanel and Scientific and Statistical Committee, the Council has adopted the following measures for Amendment No. 2 to the Surf Clam and Ocean Quahog FMP:

1. Extend the FMP through calendar year 1981;

2. Establish two management areas for the surf clam fishery: the New England Area and the Mid-Atlantic Area. The dividing line between the areas would be the established dividing line between the New England and Mid-Atlantic Fishery Management Councils. The dividing line begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" latitude and 71°54'28.477" longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ (50 CFR 601.12(a), Federal Register, Vol. 42, No. 137, July 18, 1977, page 36980).

3. The following quantities (in millions of bushels) would apply annually:

	Optimum yield (OY)	Domestic annual harvest (DAH)	Domestic annual processing (DAP)	Quota	TALFF
Surf Clams					
New England	0.025	0.025	0.025	0.025	0
Mid-Atlantic	1.800	1.800	1.800	1.800	0
Ocean Quahogs					
1980	3.500	3.500	3.500	3.500	0
1981	4.000	4.000	4.000	4.000	0

For the Mid-Atlantic Area the surf clam OY, DAH, DAP and quota of 1.8 million bushels (approximately 30 million pounds of meats) are continued unchanged as are the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, the quarterly quotas for surf clams are revised to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September.

While the DAP is shown separately in the above table for the New England and Mid-Atlantic Areas, the separate management areas do not apply to the processing sector.

4. A fishing week of no more than four days, Monday through Thursday, is continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the NMFS determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is

likely that the quarterly quota will be exceeded. Vessels would be required to stop fishing at 5:00 pm with the fishing week changed from 12:01 am Monday—11:59 pm Thursday to 5:00 pm Sunday—5:00 pm Thursday. During the months of December, January, February, and March, a make-up day for bad weather would be permitted on the fishing day following the fishing day during which the bad weather condition existed.

In the New England Area, there would be no effort restrictions until half of the 25,000 bushel quota is harvested, at which time the effort restrictions operating in the Mid-Atlantic Area would be imposed.

5. The provisions of the original FMP regarding ocean quahogs are continued unchanged except that the OY, DAH, DAP, and annual quota for ocean quahogs are increased as shown in the above table.

6. The prohibition on the entry of additional vessels into the surf clam fishery is continued in the Mid-Atlantic Area. The moratorium is lifted in the New England Area. Vessels with permits issued pursuant to the moratorium in both New England and the Mid-Atlantic may fish in both areas on both quotas. Vessels entering the fishery in New England that do not meet the moratorium conditions may not fish south of the dividing line. The moratorium does not preclude the replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

7. The provision to close surf clam beds to fishing wherein over 60% of the clams are under 4½ inches in length and less than 15% and over 5½ inches in length is continued. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

8. The licensing provisions of the original FMP are continued. The reporting requirements are continued with minor revisions.

III. Table of Contents

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X. Description of Businesses, Markets, and Organizations Associated With the Fishery.
XI. Description of Social and Cultural Framework of Domestic Fishermen and Their Communities.
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XIV. Specification and Source of Pertinent Fishery Data.
XV. Relationship of the Recommended Measures to Existing Applicable Laws and Policies.
XVI. Council Review and Monitoring of the Plan.
XVII. References.

IV. Introduction

IV–1. Development of the Plan

This amended management plan for the surf clam and ocean quahog fisheries was prepared by the Mid-Atlantic Fishery Management Council in cooperation with the New England and South Atlantic Fishery Management Councils. It contains management measures to regulate fishing for surf clam and ocean quahog and an Environmental Assessment prepared in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190).

This amended FMP, once approved and implemented by the Secretary of Commerce, will amend regulations on harvesting surf clam and ocean quahog within the FCZ that were established by the FMP currently in effect.

IV–2. Overall Management Objectives

The Mid-Atlantic Council adopted the following goals to guide management and development of the surf clam and ocean quahog fisheries in the northwestern Atlantic. They are:

1. Rebuild the declining surf clam populations to allow eventual harvest approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch from 1960 to 1976.

2. Minimize short-term economic dislocations to the extent possible consistent with objective 1.

3. Prevent the harvest of ocean quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield.

These objectives are the same as those in the original Surf Clam and Ocean Quahog FMP.

The management unit for this amended FMP is the same as that of the original Surf Clam and Ocean Quahog FMP, specifically, all surf clam (*Spisula solidissima*) and all ocean quahog (*Arctica islandica*) in the Atlantic FCZ.

V. Description of the Stocks

V–1. Introduction

The following Section contains the most recent biological assessments of the surf clam and ocean quahog resources.[1, 2] It supplements and updates the presentations given in Section IV, Description of the Stocks Comprising the Management Unit in the 1977 Surf Clam and Ocean Quahog FMP.

V–2. Abundance, Present Condition, and Estimate of MSY

Surf Clam [3]

Summary

Total 1978 landings of surf clam (*Spisula solidissima*) from the Middle Atlantic FCZ were 31.4 million pounds of meat, or a 27% decline from 1977. The sharp decline in landings was recommended in the Surf Clam and Ocean Quahog FMP. Approximately 92% of the 1978 catch was taken off the Delmarva Peninsula, with 8% taken off New Jersey, and 0.2% off southern Virginia-North Carolina.

Stratified mean catch per tow indices from NMFS shellfish surveys during January and December, 1978, indicated no significant change in resource abundance of harvestable (>12 cm shell length) clams off Delmarva, northern New Jersey, or southern New Jersey. Pre-recruit indices (i.e., mean catch per tow of clams <11.9 cm) increased dramatically off Delmarva and northern New Jersey during 1978.

Commercial catch/effort (bushels/hour) data from logbook records further suggest relative resource stability as quarterly mean catch per effort indices for the three vessel classes (0–50, 51–100, 101+gross registered tons) varied only slightly within offshore areas throughout 1978.

Average recruitment to the fishery should be maintained during the next several years. Accordingly, if the distribution and level of annual Middle Atlantic landings in 1979 and 1980 approximate those in 1978, commercially exploitable biomass should not change markedly in the immediate future. A significant increase in population size of harvestable clams should occur in 1981–1982 if natural mortality remains

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[1] Murawski, S. A., and F. M. Serchuk. April, 1979a. An assessment of offshore surf clam, *Spisula solidissima*, populations off the Middle Atlantic coast of the United States. NMFS, Woods Hole Laboratory Reference NO. 79–13: 36 p.

[2] Murawski, S. A., and F. M. Serchuk. April, 1979b. Dynamics of ocean quahog, *Arctica islandica*, populations off the Middle Atlantic coast of the United States. NMFS, Woods Hole Laboratory Reference No. 79–16: 24 p.

[3] The following discussion, figures, and tables are taken from Murawski and Serchuk, 1979a, op. cit.

constant and fishing mortality remains minimal until then on pre-recruits sampled off Delmarva and northern New Jersey.

Introduction

Offshore surf clam populations in the US Atlantic fishery conservation zone have been managed since November 17, 1977, by a Fishery Management Plan (FMP) for the surf clam and ocean quahog fisheries developed by the Mid-Atlantic Fishery Management Council and implemented by the US Department of Commerce through the NMFS. A principal objective of the FMP is first to stabilize the abundance of recently declining Middle Atlantic surf clam populations and then to rebuild these populations to levels that would sustain total annual harvests of 50 million pounds of meats. To achieve this objective, the FMP established a variety of regulations including an annual total landings quota of 1.8 million bushels (approximately 30 million pounds of meats). As a result, the total Middle Atlantic surf clam catch from the FCZ declined 27% between 1977 and 1978 (43.0 to 31.4 million pounds) (Table 1).

In this report, the effects of the 1978 surf clam harvest are examined relative to population abundance and size composition of offshore (FCZ) Middle Atlantic surf clam resources. Data analyzed include: (1) Research vessel survey results, 1976–1978; (2) commercial fishery vessel logbook records required by the FMP, 1978; (3) dockside NMFS commercial surf clam vessel Middle Atlantic trip interview records, 1978; and (4) commercial length-frequency samples of surf clams collected during 1976–1978. The present report updates and expands commercial and research data previously presented (Brown et al., 1977;[2] Serchuk et al., 1979).

Historical Perspective

Although the commercial harvest of surf clam began around 1870, as a bait fishery, the modern food fishery originated in the 1940s in response to wartime demands for shellfish and other protein foods (Westman and Bidwell, 1946). Between 1944 and 1945, total landings increased four-fold (1.2 to 4.8 million pounds), with virtually all of the catch taken from inshore beds off Long Island. In 1950, extensive offshore New Jersey beds, more dense and yielding more meat per bushel than the Long Island beds, were discovered which subsequently sustained average annual landings of 10 million pounds during 1950–1959 (Lyles, 1969), and served as the major fishery resource base until the early 1970s. In this early period, production increases were also influenced by improvements in harvesting efficiency and steady increases in fleet size (Serchuk et al., 1979).

Table 1.—*Total Middle Atlantic surf clam landings, landings from the FCZ, and percentage of total landings taken in the FCZ*

[Thousands of pounds]

Year	Total	FCZ	Percent Caught in the FCZ
1965	44,087	33,000	74.85
1966	45,078	32,400	71.88
1967	45,943	24,700	53.76
1968	40,534	20,000	49.34
1969	49,562	15,900	32.08
1970	67,155	14,100	21.00
1971	52,362	50,053	[1]95.59
1972	63,310	55,272	[1]87.30
1973	82,308	72,579	[1]88.18
1974	96,069	74,430	[1]77.48
1975	86,880	44,270	[1]50.96
1976	49,023	42,558	[1]86.80
1977	51,200	42,968	[1]83.92
1978 [3]	[2]38,657	[2]31,399	[2]81.22

[1] Prorations for 1971–1977 based on data presented in the series Fisheries of the United States, published annually by the U.S. Fish and Wildlife Service, and in later years by the NMFS. Earlier data based on interview information collected by the Bureau of Commercial Fisheries.

[2] Summation of logbook reports; includes landings of approximately 27,200 pounds of meats by vessels registered in New England ports.

[3] Preliminary.

Until the mid-1960s, the offshore beds off northern New Jersey (those near Pt. Pleasant) were the mainstay of the surf clam fishery. As these beds became depleted, the inshore surf clam resources off southern New Jersey (near Cape May and Wildwood) were more heavily fished. Between 1965–1970, the percentage of the total Middle Atlantic surf clam landings from the FCZ decreased from 75% to 21% (Table 1), while the inshore landings increased nearly five-fold (11.1 million pounds in 1964 to 53.1 million pounds in 1970). This trend was strikingly reversed in 1971 by the discovery and beginning of fishing on abundant offshore surf clam beds off southern Virginia-North Carolina; from 1971–1974, total Middle Atlantic landings were dominated by catches from this area. The subsequent collapse of the Virginia fishery stimulated a northward return of the fleet. Since 1976, the bulk of the Middle Atlantic landings have been from offshore the Delmarva region (near Ocean City, Maryland).

Research Vessel Survey Results

Distribution and relative abundance of Middle Atlantic surf clam populations have been evaluated through federal research vessel survey cruises conducted since 1965 (Ropes, 1979; Serchuk et al., 1979). Results of research cruises from 1965–1977 have been previously summarized in Brown et al. (1977) and Serchuk et al. (1979).

The most recent continuous annual surf clam research vessel survey series commenced in 1976. Four Middle Atlantic surveys were conducted between 1976 and 1978 (Table 2) with the R/V *Delaware* II employing a 121.92 cm (48 in) wide hydraulic dredge. The 1976 and 1977 surveys used a grid-type survey sampling design, with stations spaced approximately 10 nautical miles apart along 10 nautical mile transect intervals. In the two 1978 cruises, a stratified random sampling scheme was employed; thus, the Middle Atlantic survey area was stratified into relatively homogeneous geographical zones on the basis of depth, bottom type, and general ecological conditions (Figure 1). Strata groupings corresponding to previously established surf clam assessment offshore fishing areas (Brown et al., 1977; Serchuk et al., 1979) are:

Northern New Jersey (NNJ): Strata 21, 25 and 88–90

Southern New Jersey (SNJ): Strata 17 and 87

Delmarva (DMV): Strata 9, 10, 13, 14 and 82–86.

Table 2.—*Ocean shellfish research cruises used in the analysis of surf clam populations*

Cruise dates (month/year)	Research vessel	Time of tow [1]	Knife width [2]
12/78 (78-07)	*Delaware* II	4	48
1-2/78 (78-01)	*Delaware* II	4	48
1-3/77 (77-01)	*Delaware* II	4	48
4-5/76 (76-01)	*Delaware* II	4	48

[1] In minutes.

[2] In inches.

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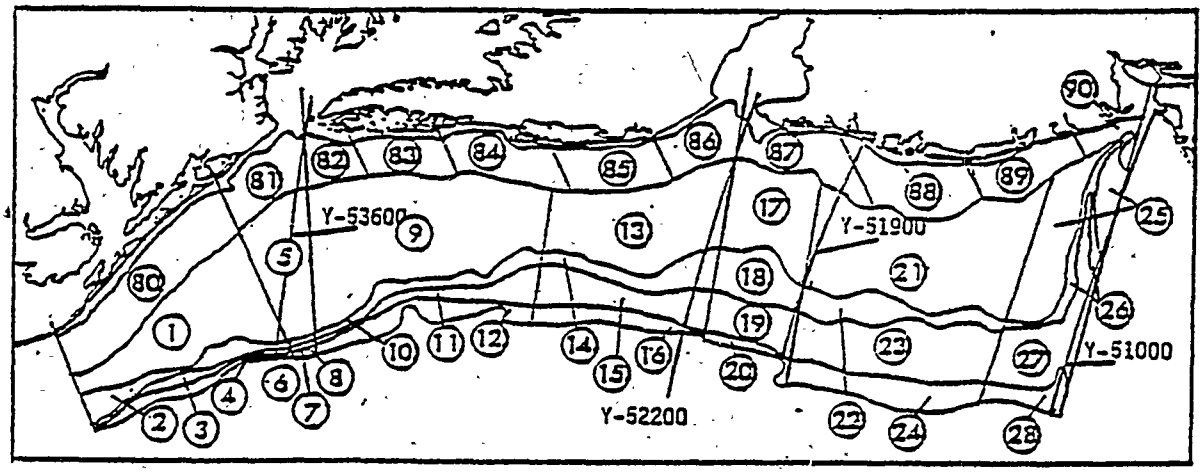
[2] Presented in the 1977 FMP.

Figure 1

Ocean Shellfish Survey Strata Off The Atlantic Coast, New Jersey To Cape Hatteras.

Loran C-Y Bearings Delineating Surf Clam Assessment Areas Are Also Given



Strata Number	Square Miles	Depth (fms)	Strata Number	Square Miles	Depth (fms)	Strata Number	Square Miles	Depth (fms)
Offshore								
1	1163	15-25	10	152	25-30	19	274	30-40
2	175	25-30	11	229	30-40	20	120	40-60
3	126	30-40	12	204	40-60	21	1650	15-25
4	117	40-60	13	1127	15-25	22	312	25-30
5	453	15-25	14	219	25-30	23	714	30-40
6	62	25-30	15	394	30-40	24	476	40-60
7	46	30-40	16	211	40-60	25	648	15-25
8	74	40-60	17	749	15-25	26	188	25-30
9	2171	15-25	18	249	25-30	27	451	30-40
						28	149	40-60
Inshore								
80	767	5-15	84	417	5-15	88	578	5-15
81	360	5-15	85	382	5-15	89	382	5-15
82	180	5-15	86	203	5-15	90	182	5-15
83	241	5-15	87	479	5-15			

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Sampling stations were allocated to strata roughly in proportion to each stratum area and assigned to specific locations within strata at random. Additional random samples were also allotted to strata possessing known large concentrations of surf clams. A 4 minute tow was taken at each station, after which volume and numbers captured, shell-length, and other relevant data were recorded.

To compare the 1976 and 1977 results with the later surveys, station data from the 1976 and 1977 surveys were post-stratified before analysis into the sampling strata used in 1978.

Following procedures given by Cochran (1977), stratified mean catch, in numbers, per tow for strata groupings (NNJ, SNJ, and DMV) was calculated by

$$\bar{Y}_{st} = \sum_{h=1}^{L} (N_h \bar{Y}_h)$$

where:

$\bar{Y}_{st}$ = stratified mean catch, in numbers, per tow

N_h = area of the hth stratum

$\bar{Y}_h$ = mean catch, in numbers, per tow of the hth stratum, and

L = number of strata in the strata grouping

Individual strata catch length frequencies were prorated from measured subsamples, and then the stratified mean catches partitioned into 1 cm length intervals. Relative abundance catch (numbers) per tow indices were derived for pre-commercial sized clams (i.e., pre-recruits, > 11.9 cm shell length), commercial sized clams (≥12.0 cm shell length), and total clams caught per tow.

Research Vessel Relative Abundance Indices

Research vessel relative abundance indices (stratified mean number per tow) obtained from the 1976–1978 Middle Atlantic shellfish assessment cruises are presented by offshore surf clam fishery areas (NNJ, SNJ, and DMV) in Table 3. Results derived from each of these areas are separately discussed.

Table 3.— *Summary of Stratified Mean Catch per Tow Data for Surf Clams during Shellfish Assessment Cruises, 1976–1978*

Area	Cruise	Total Number per Tow	Number per tow >119 mm	Number per tow >120 mm
Northern New Jersey	78–07	28.77	27.80	0.97
	78–01	1.32	0.85	0.47
	77–01	1.57	0.86	0.71
	76–01	8.27	1.02	7.25
Southern New Jersey	78–07	5.54	2.00	3.54
	78–01	9.56	1.59	7.97
	77–01	1.44	0.78	0.66
	76–01	3.33	0.24	3.09

Table 3.— *Summary of Stratified Mean Catch per Tow Data for Surf Clams during Shellfish Assessment Cruises, 1976–1978*—Continued

Area	Cruise	Total Number per Tow	Number per tow <119 mm	Number per tow <120 mm
Delmarva	78–07	398.37	394.23	4.14
	78–01	7.44	2.57	4.87
	77–01	7.29	1.45	5.84
	76–01	14.06	3.50	10.56

Northern New Jersey

All northern New Jersey relative abundance indices declined sharply between 1976 and 1977, primarily due to population losses caused by anoxic bottom water conditions during the summer of 1976. Total numbers per tow declined 81% (8.27 to 1.57); pre-recruit and commercial-size indices declined 16% and 90%, respectively (Table 3). Significantly, the relative effects of the anoxia and fishing mortality during the year were more severe on harvestable sized clams than on pre-recruits (Figures 2 and 3).

Between 1977 and December, 1978, (Cruise 78–07), the commercial-sized relative abundance indices remained at relatively low levels (0.47 to 0.97 clams per tow). Pre-recruit indices, however, stable in 1977 and January, 1978, (Cruise 78–01), increased 33 fold in the December, 1978, survey, with the latter value (27.80) being the highest in the 1976–1978 period. Due to this successful recruitment, the total number per tow index in December, 1978, was 28.77, 22 times larger than in January, 1978, and 3.5 fold greater than the 1976 value.

Southern New Jersey

Total and commercial-sized relative abundance indices in southern New Jersey exhibited no apparent trends between 1976 and 1978 (Figures 4 and 5), fluctuating between 1.44–9.56 and 0.66–7.97 respectively (Table 3). Pre-recruit indices, however, steadily increased from 0.24 clams per tow in 1976 to 2.00 clams per tow in December, 1978 (Figure 5).

The southern New Jersey commercial-sized catch per tow indices reflect, in part, the differential geographic effects of the 1976 bottom water anoxia in offshore New Jersey; the 1976 index of recruit sizes was about half that obtained in northern New Jersey (3.09 vs 7.25), but 6 times greater in 1978 than the corresponding 1978 northern New Jersey commercial-size index (3.54 vs 0.97) (Table 3). In any case, the fluctuations in catch per tow in southern New Jersey were much less drastic than in the northern New Jersey area.

Delmarva

All Delmarva relative abundance indices declined by greater than 44% between 1976 and 1977 (pre-recruit:— 59%; commercial size:— —45%; total:— 48% (Table 3, Figures 6 and 7). Since 1977, the commercial size indices have annually trended slightly downward (5.84 in 1977; 4.14 in December, 1978), although this decline is probably not significant given the sampling variability associated with the shellfish surveys. Contrariwise, the marked increase in the pre-recruit index in December, 1978 (394.23), from the previous values observed during 1976–January, 1978 (3.50, 1.45, and 2.57) implies a recent significant increase in the abundance of pre-recruit clams in the Delmarva region. Large catches of pre-recruit individuals in the December, 1978, survey in stratum 85 (off Ocean City, Maryland) and stratum 9 indicated a wide-spread distribution of small clams in offshore waters from Chincoteague to Cape Charles, Virginia.

Preliminiary analysis of the January, 1979, shellfish research vessel survey cruise, conducted with a 152.40 cm (60 in.) wide hydraulic clam dredge equipped with a submersible pumping system, corroborated the December, 1978, pre-recruit findings since the increased abundance of small clams in both Delmarva and northern New Jersey was noted in this latest survey as well.

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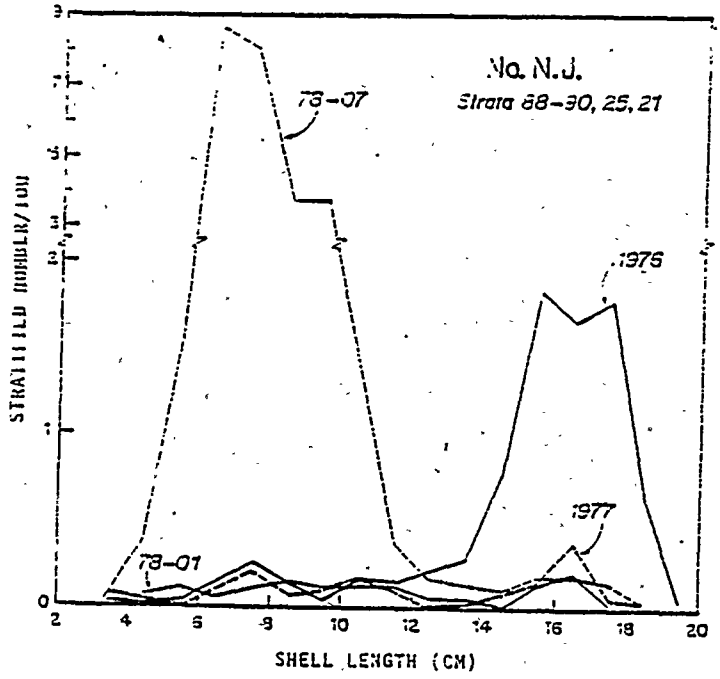


Figure 2

Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge In Each 1 cm Shell Length Group, From Northern New Jersey, 1976-1978

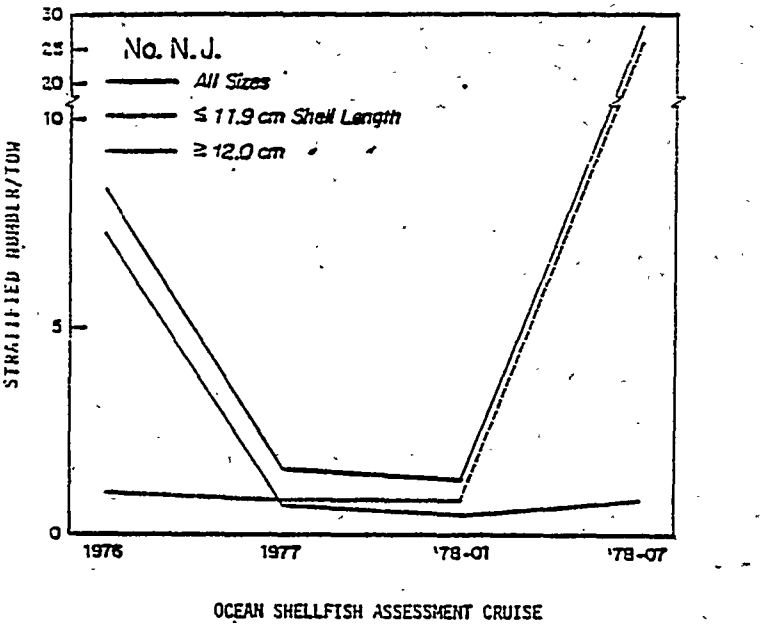


Figure 3

Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge Off Northern New Jersey, 1976-1978. Values Given For All Sizes, Pre-Recruits (≤ 11.9 cm Shell Length), And Harvestable Sizes (≥ 12.0 cm Shell Length).

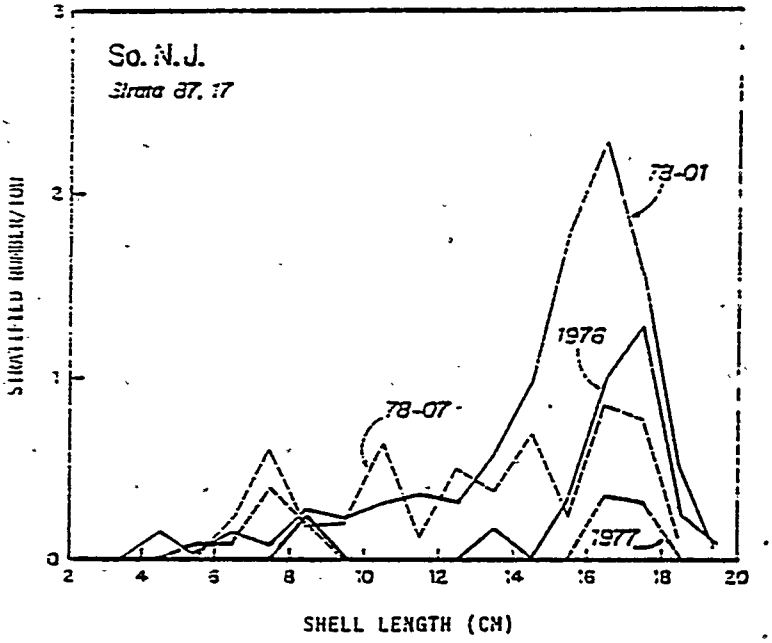


Figure 4

Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge In Each 1 cm Shell Length Group, From Southern New Jersey, 1976-1978.

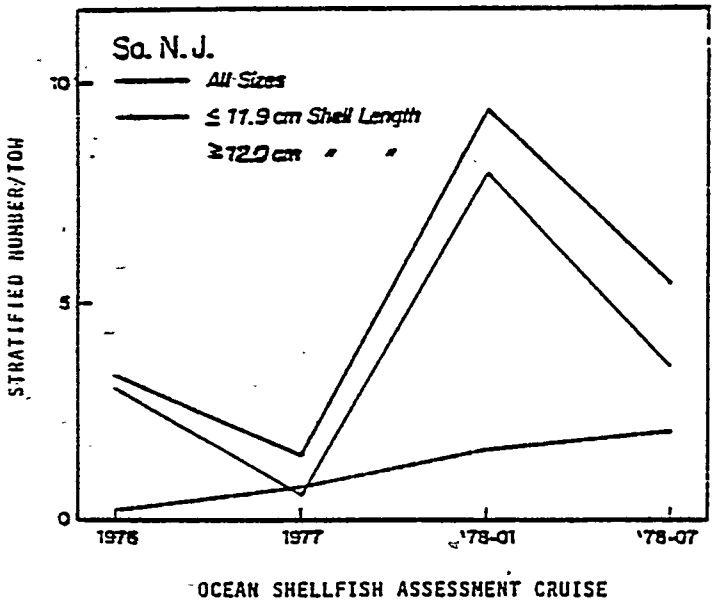
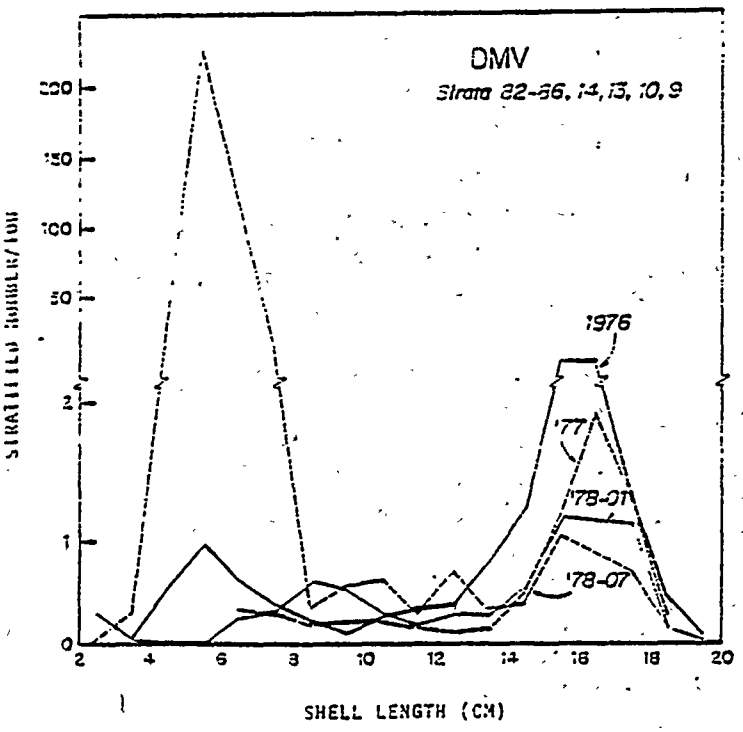


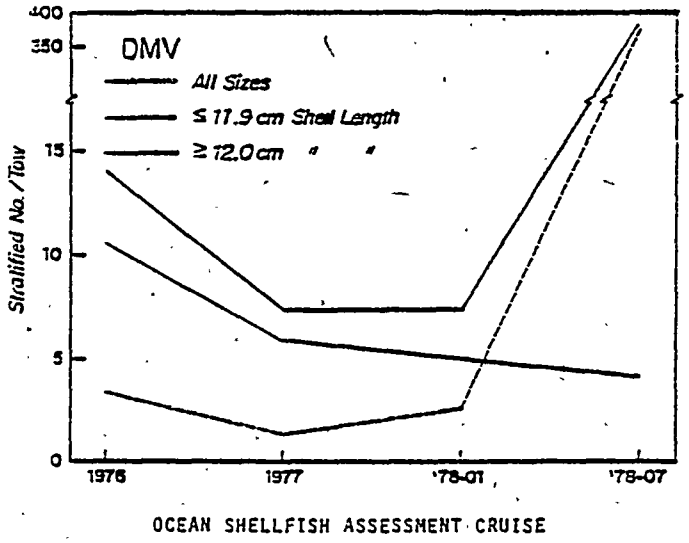
Figure 5

Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge Off Southern New Jersey, 1976 - 1978. Values Given For All Sizes, Pre-Recruits (≤ 11.9 cm Shell Length), And Harvestable Sizes (≥ 12.0 cm Shell Length).



Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge In Each 1 cm Shell Length Group, From Delmarva, 1976-1978.

Figure 6



Stratified Mean Number Of Surf Clams Taken Per 4 Minute Tow With 48 Inch Survey Dredge Off Delmarva, 1976-1978. Values Given For All Sizes, Pre-Recruits (≤ 11.9 cm Shell Length), And Harvestable Sizes (≥ 12.0 cm Shell Length).

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Figure 7

Commercial Catch Per Effort

Relative abundance indices for Middle Atlantic surf clam populations during 1978 were also derived from commercial catch per unit effort data (bushels landed per hour fished). Commercial logbook records, mandated by the FMP, were examined for individual trip information on catch (bushels), hours fished, catch location (LORAN bearings, or latitude-longitude designation), date of catch, and vessel size. Since three vessel tonnage size classes are recognized in the FMP, catch per effort indices were calculated separately for each vessel class. These classes are:

	Gross registered tonnage (GRT)	Number of vessels
Vessel class:		
1	1-50	20
2	51-100	58
3	101+	74

Each vessel trip record that possessed complete or sufficient data for analysis was assigned to a principal assessment—offshore fishery area (NNJ, SNJ, or DMV) based on supplied catch location information. LORAN C-Y bearings demarcating these major areas are provided in Figure 1. Catch and effort data were further categorized temporally by calendar quarter. Mean catch per hour was computed, by area and calendar quarter, for each vessel class by

$$M_{c/f} = \frac{1}{n} \sum_{i=1}^{n} \frac{c_i}{f_i}$$

where:

$M_{c/f}$ = mean catch (bushels) per hour fished

c_i = catch in bushels in trip i

f_i = number of hours fished in trip i, and

n = total number of trips

Standard deviations and standard errors were also computed for each of the mean catch per hour estimates (Cochran, 1977).

Commercial Abundance Indices in 1978

Catch and effort statistics derived from vessels operating in the Middle Atlantic surf clam fishery during 1978 are summarized by major area fished, vessel class and calendar quarter in Table 4 and Figures 8–10. Results from each are discussed separately below.

Northern New Jersey

A total of 102 trip records from the offshore northern New Jersey area were amenable to analysis. No Class 1 vessels reported sufficient data for deriving abundance indices for any calendar quarter during 1978. Catch per hour fished for vessels in Classes 2 and 3 varied considerably both within and between quarters during the year (Figure 8), although no significant differences were detected in vessel class mean catch per effort values among calendar quarters. Mean quarterly catch per hour for Class 2 vessels ranged from 13.80 bushels per hour (Quarter 2) to 26.74 bushels per hour (Quarter 4) (Table 4). For Class 3 vessels, seasonal mean catch rates varied between 19.30 bushels per hour (Quarter 4) and 24.19 bushels per hour (Quarter 2). Overall, the weighted mean catch per hour for Class 2 and 3 vessels was 17.67 and 21.01 bushels, respectively, implying that Class 3 vessels operating in northern New Jersey caught 19% more per hour than Class 2 vessels in this region. This difference, however, is not statistically significant.

Table 4.—*Commercial Catch/Effort Data for Surf Clam Vessels Operating in the FCZ Off New Jersey and Delmarva in 1978*

Area and tonnage class	Quarter	Total bushels clams	Total hours fished	Mean bushels/ hour	SD(a) bushels/ hour	SE(b) bushels/ hour	Minimum bushels/ hour	Maximum bushels/ hour	Number of trips
NORTHERN NEW JERSEY									
1-50	1	0	0.00						0
	2	0	0.00						0
	3	0	0.00						0
	4	0	0.00						0
51-100	1	384	16.00	23.37	7.18	5.08	18.29	28.44	2
	2	1,784	104.00	18.13	13.58	4.09	0.63	45.00	11
	3	4,774	385.50	13.80	8.19	1.35	3.75	40.00	37
	4	2,290	79.00	26.74	9.22	2.47	11.00	44.80	14
101+	1	0	0.00						0
	2	6,517	270.50	24.19	8.79	2.44	11.58	46.83	13
	3	3,370	159.00	19.41	5.96	1.72	7.50	27.29	12
	4	3,217	167.00	19.30	13.51	3.75	6.44	53.33	13
SOUTHERN NEW JERSEY									
1-50	1	258	22.00	11.73	0.00	0.00	11.73	11.73	1
	2	1,243	77.00	14.42	10.69	4.78	6.58	32.90	5
	3	2,628	238.50	11.10	6.93	1.33	1.72	24.00	27
	4	2,585	199.00	13.19	6.85	1.40	3.60	28.67	24
51-100	1	2,354	157.00	14.92	3.49	1.10	8.73	22.86	10
	2	8,464	542.00	15.46	3.15	0.51	8.20	24.00	38
	3	6,720	344.50	19.57	12.33	2.18	6.67	53.00	32
	4	7,806	360.00	22.69	14.87	2.51	0.75	75.83	35
101+	1	3,841	205.30	17.82	4.62	1.39	12.80	25.14	11
	2	14,862	760.50	20.11	13.55	2.29	3.13	63.30	35
	3	9,714	398.00	23.96	12.10	2.29	7.00	46.94	28
	4	15,910	561.00	27.52	17.81	2.63	0.33	73.14	46
DELMARVA									
1-50	1	1,173	82.50	13.74	3.42	1.53	9.20	16.70	5
	2	16,152	1044.00	16.73	14.76	1.74	6.67	130.67	72
	3	17,454	1022.00	17.03	6.03	0.65	5.40	32.50	85
	4	9,347	582.80	16.32	5.79	0.77	7.11	41.00	56
51-100	1	10,165	485.25	22.23	7.82	1.41	9.75	37.58	31
	2	107,092	5359.75	20.28	7.02	0.37	3.75	69.33	357
	3	91,566	4601.70	19.88	6.98	0.36	1.33	45.33	380
	4	60,159	3961.10	20.04	5.99	0.34	6.50	40.00	319
101+	1	47,827	1632.50	28.15	16.36	1.94	8.67	89.90	71
	2	282,544	10511.15	27.46	13.82	0.61	1.04	90.67	509
	3	256,737	8451.75	31.24	17.10	0.68	0.22	117.33	641
	4	216,209	7302.50	30.31	17.36	0.75	2.67	121.50	536

(a) Std. Dev. = Standard Deviation.
(b) SE = Standard Error.

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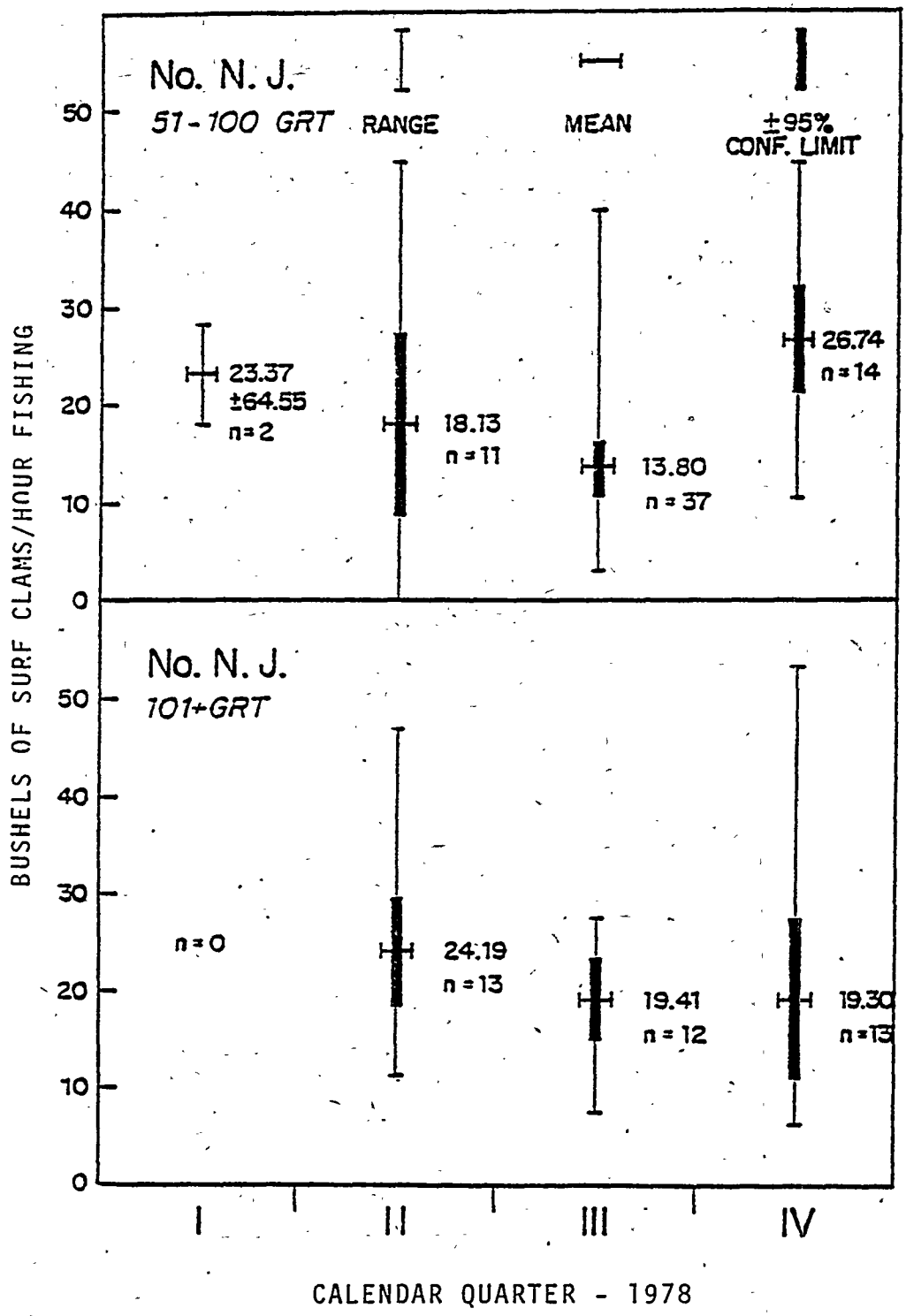
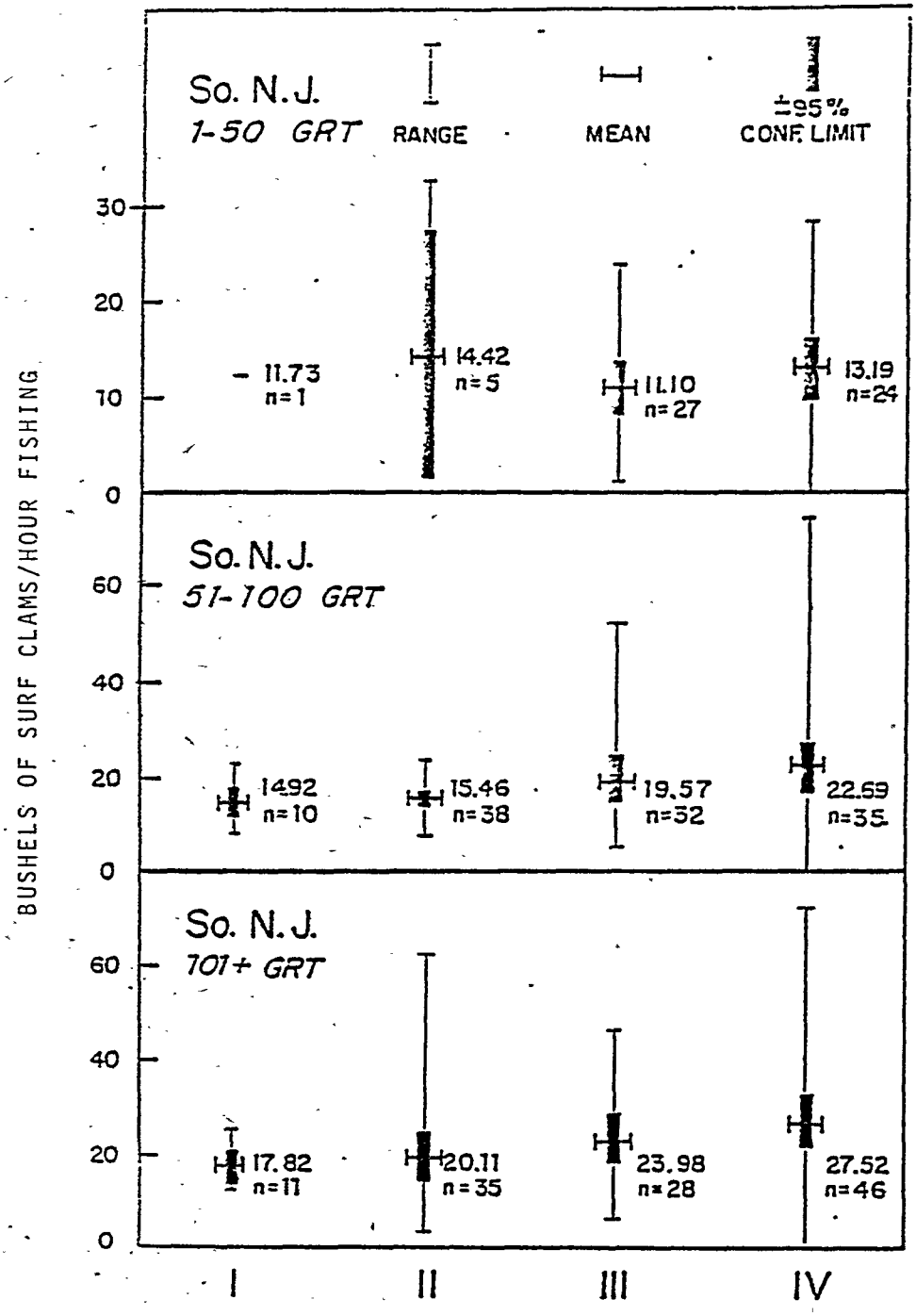


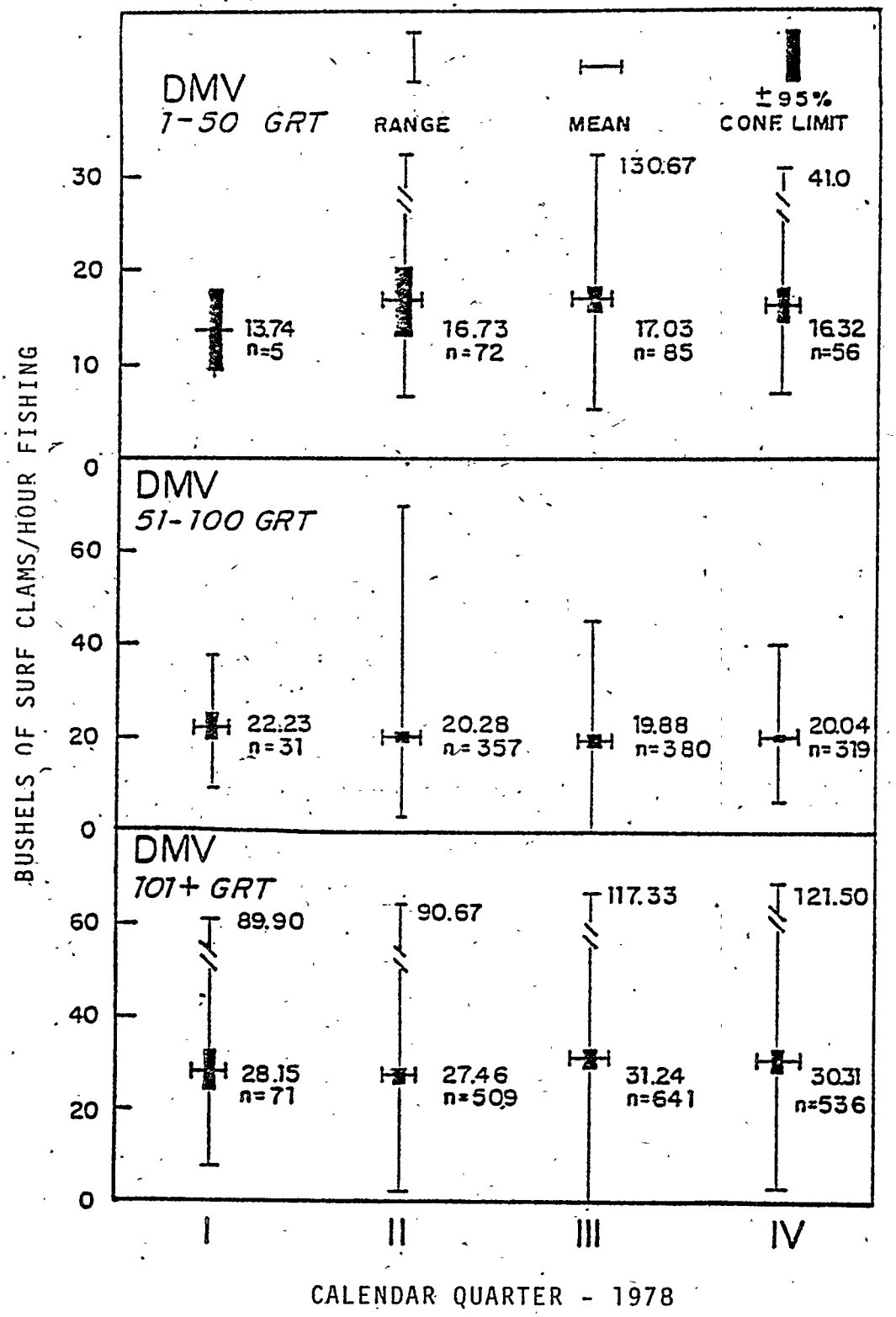
Commercial Catch Per Effort Data For Vessels Operating Off Northern New Jersey During 1978. Values Expressed As Bushels Of Surf Clams Per Hour Fishing.

Figure 8



Commercial Catch Per Effort Data For Vessels Operating Off Southern New Jersey During 1978. Values Expressed As Bushels Of Surf Clams Per Hour Fishing.

Figure 9



Commercial Catch Per Effort Data For Vessels Operating Off Delmarva During 1978. Values Expressed As Bushels Of Surf Clams Per Hour Fishing.

Figure 10

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Southern New Jersey

Vessels operating during 1978 in offshore southern New Jersey completed 292 trips amenable for catch and effort analysis (Class 1: 57 trips, Class 2: 115 trips; Class 3: 120 trips). In every quarter, mean catch per effort was highest for Class 3 vessels and lowest for Class 1 vessels (Figure 9; Table 4). Within a vessel class, no significant differences in quarterly mean catch rates were detected. The lack of significant declines in catch per hour throughout the year suggests no significant reduction in the abundance of southern New Jersey surf clams if effort was proportional to fishing mortality rates.

Mean quarterly catch rates for Class 1 vessels ranged from 11.10–13.19 bushels per hour. Class 2 quarterly mean catch per tow values varied between 14.92 and 22.69 bushels per hour, while Class 3 quarterly mean catch per effort indices ranged between 17.82 and 27.52 bushels per hour. Yearly weighted mean catch rates for vessel Classes 1, 2, and 3 were 12.28, 18.76 and 23.64, respectively. The mean catch rates for vessel Classes 2 and 3 in southern New Jersey were thus slightly greater than corresponding values for northern New Jersey.

Delmarva

A total of 3,062 trips during 1978 in offshore Delmarva were analyzed for commercial catch per effort data (Class 1: 218 trips; Class 2: 1,087 trips; Class 3: 1,757 trips). Delmarva vessel trip records comprised 89% of the total Middle Atlantic offshore logbook records sufficiently detailed for 1978 commercial catch/effort analysis.

Temporal patterns in Delmarva surf clam catch rates, both within and between vessel class groupings, were similar to those noted in southern New Jersey, viz: within each calendar quarter, Class 3 vessels exhibited the highest mean catch per hour and Class 1 vessels the lowest, and within each vessel class, seasonal mean catch rates exhibited little fluctation throughout the year (Table 4; Figure 10).

Mean quarterly catch per effort values within any of the three vessel classes in Delmarva never varied over time by more than 3.3 bushels per hour. Average overall catch rates for the three tonnage classes were 16.67, 20.13, and 29.74 bushels per hour, respectively, and hence were higher than corresponding vessel class catch rates in either northern or southern New Jersey.

Yield per Recruit

Yield per recruit analyses for Middle Atlantic surf clam were accomplished using Paulik and Gales' (1964) model with $W_\infty = 174.8g$, $K = 0.3189$, $t_o = 0.1874$ years, $t_r = 0.25$ years, $M = 0.25$ (slightly greater than the total mortality rate of unexploited Canadian surf clam populations sampled by Caddy and Billard (1976)), $t\lambda = 16.0$ years, $F = 0.1–2.0$, and $t_c = 0.25–8.0$ years. Growth relationships (von Bertalanffy growth-in-length equation; shell length-drained meat weight equation) and associated growth parameters were determined from commercial surf clam samples taken off the Delmarva Peninsula (Table 5, Figure 11).

Maximum yield per recruit (F_{max}) occurs at an age of first capture (t_c) of 4.5 years and an instantaneous fishing mortality of $F = 2.0$ (Table 6, Figure 12). Under these conditions, the mean shell length at first capture is 12.5 cm.

For almost all F values, conditional maximum yield per recruit increases as age at first capture is increased until age 4 (about 11.8 cm shell length). At F levels less than 1.5, yield per recruit decreases when age at first capture is increased beyond age 4.

If high fishing mortality rates (i.e., > 1.5) are maintained, few individuals > 12 cm in shell length survive to spawn, and thus reproduction may be dependent on recent year classes of small individuals. Moderate fishing levels support a heterogeneous age structure in the spawning population, that may be necessary when several poor year classes occur in succession.

Table 5.—*Calculated Mean Shell Lengths and Meat Weights at Age for Surf Clams from Offshore Waters of the Middle Atlantic*

	Shell length [1]		Meat weight [2]	
Age	(millimeters)	(inches)	(grams)	(ounces)(CF)
1	38.17	1.50	3.63	0.13
2	73.40	2.89	20.18	0.71
3	99.01	3.90	44.25	1.56
4	117.63	4.63	69.52	2.45
5	131.17	5.16	92.51	3.26
6	141.01	5.55	111.84	3.94
7	148.16	5.83	127.33	4.49
8	153.36	6.04	139.38	4.92
9	157.14	6.19	148.57	5.24
10	159.89	6.30	155.49	5.48
11	161.88	6.37	160.62	5.67
12	163.33	6.43	164.42	5.80
13	164.39	6.47	167.23	5.90
14	165.16	6.50	169.29	5.97
15	165.72	6.52	170.80	6.02
16	166.12	6.54	171.88	6.06

[1] Computed from $l_t = 167.20\ [1 - e^{-0.3189\ (t - 0.1874)}]$.
Source: NMFS commercial samples.
[2] Computed from $\log_{10} W = 3.5878 + 2.6224 \log_{10} L$.
Source: NMFS commercial samples.

Table 6.—*Yield per Recruit (g) for Middle Atlantic Offshore Surf Clams With Various Instantaneous Rates of Fishing Mortality (F) and Age at First Selection (t_c) Natural Mortality (M) = 0.25 and Age at Recruitment = 0.25 Shell Lengths (mm) Corresponding to Various Ages in Parentheses*

[Age at entry (length at entry)]

F	2.0 (73.40)	2.5 (87.23)	3.0 (99.01)	3.5 (109.06)	4.0 (117.63)	4.5 (124.94)	5.0 (131.17)	5.5 (136.48)
0.1	14.13	14.06	13.74	13.22	12.55	11.77	10.92	10.05
0.2	19.46	19.87	19.84	19.41	18.69	17.73	16.63	15.44
0.3	21.46	22.41	22.77	22.58	21.99	21.06	19.89	18.59
0.4	22.07	23.52	24.26	24.35	23.92	23.07	21.92	20.58
0.5	22.09	23.96	25.03	25.38	25.12	24.37	23.27	21.93
0.6	21.84	24.07	25.43	26.01	25.90	25.26	24.21	22.89
0.7	21.48	24.00	25.62	26.39	26.43	25.88	24.90	23.60
0.8	21.08	23.85	25.69	26.63	26.80	26.35	25.42	24.15
0.9	20.68	23.66	25.69	26.78	27.07	26.69	25.82	24.58
1.0	20.29	23.56	25.64	26.87	27.26	26.96	26.13	24.92
1.1	19.92	23.24	25.57	26.92	27.40	27.17	26.39	25.20
1.2	19.57	23.04	25.49	26.94	27.51	27.33	26.59	25.44
1.3	19.25	22.84	25.40	26.95	27.59	27.47	26.77	25.63
1.4	18.96	22.64	25.31	26.94	27.64	27.58	26.91	25.80
1.5	18.68	22.46	25.21	26.92	27.69	27.67	27.03	25.94
1.6	18.43	22.29	25.12	26.90	27.72	27.74	27.14	26.07
1.7	18.20	22.13	25.03	26.87	27.74	27.80	27.23	26.18
1.8	17.98	21.98	24.95	26.84	27.76	27.86	27.31	26.27
1.9	17.78	21.84	24.86	26.81	27.77	27.90	27.37	26.36
2.0	17.59	21.71	24.78	26.78	27.78	27.94	27.43	26.43

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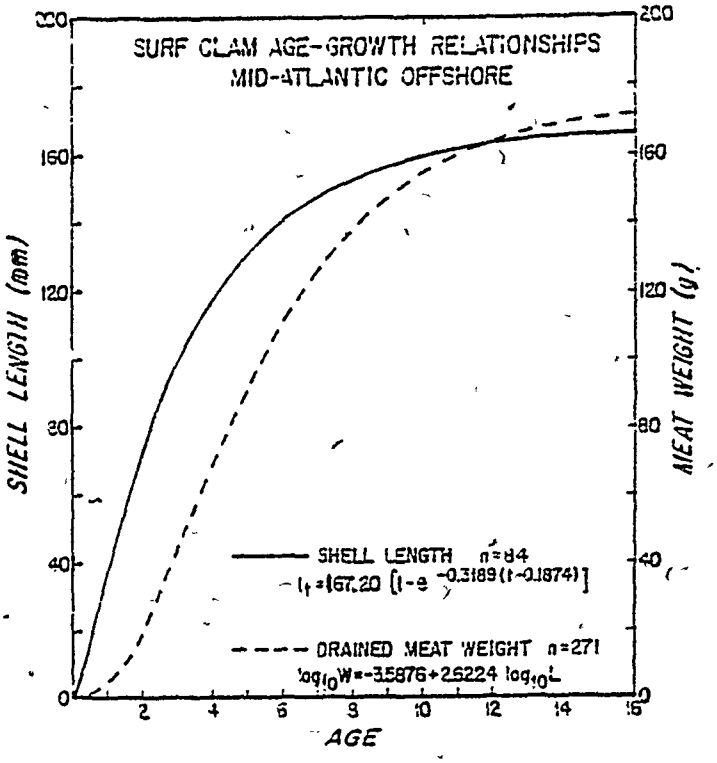
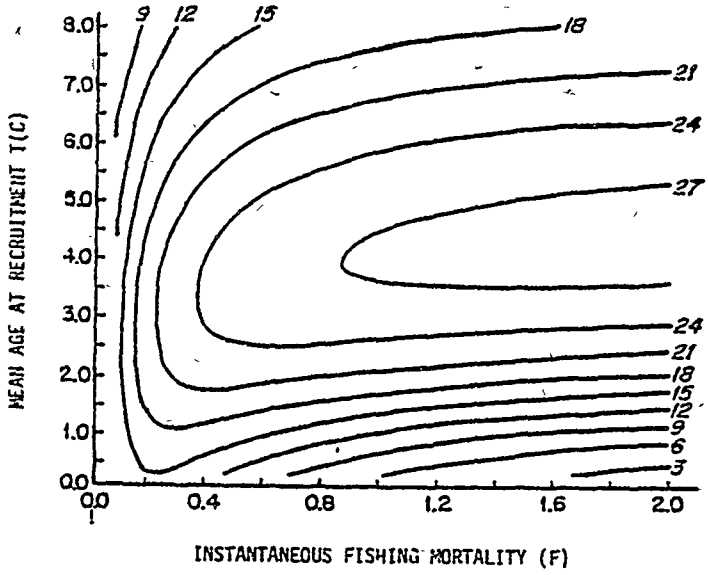


Age-Growth Relationships For Surf Clams From Offshore Waters Of The Mid-Atlantic. Shell Lengths Expressed In Millimeters, Meat Weights In Grams.

Figure 11



Yield Per Recruit Isopleth For Offshore Mid-Atlantic Surf Clams.

Figure 12

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Commercial Catch Size Composition

Shell length-frequency distributions of commercial landings of surf clams from the principal Middle Atlantic assessment-offshore fishery areas (NNJ, SNJ, and DMV) during 1976–1978 are presented in Figures 13–15. Length-frequency samples were obtained from dockside catch sampling in which typically five subsamples of six clams were measured from a trip landing. Overall offshore areal commercial size composition was derived by weighting each sample length frequency distribution by the total catch in bushels taken during the trip and then summing over all sampled trips during the year. Surf clam catches in depths of less than 10 fathoms were excluded from analysis since these would normally not be from the offshore populations.

Commercial length-frequency distributions in all three of the major offshore regions during 1976–1978 are similar (Figures 13–15). Modal size values occurred at 16–17 cm shell length with clams larger than 20 cm or smaller than 12-cm rarely present in the sampled landings. The virtual absence of clams smaller than 12 cm implies size selectivity in the fishery since research vessel survey size-frequency distributions in 1976–1978 indicated significant segments of the Middle Atlantic populations to be smaller than 12 cm (Table 3). The commercial catch composition hence reflects culling practices or the concentraion of harvests on beds of predominantly large surf clams. Since maximum yield per recruit occurs at a size at first capture of about 12 cm, there appears little need to implement a minimum size restricton in the current fishery to increase potential biological yield. Future changes in cull sizes or significant dredge-induced mortality on pre-recruit clams, however, may necessitate reevaluation of size at first capture considerations if yield per recruit is to maximized.

Current Status and Future Outlook of Middle Atlantic Surf Clam Populations

In 1978, total surf clam landings from offshore Middle Atlantic populations were 31.4 million pounds (Table 1). Of this total, approximately 28.8 million pounds were taken from the Delmarva area (92% of 1978 FCZ landings), 2.5 million pounds from offshore New Jersey (8%), and less than 60,000 pounds from southern Virginia-North Carolina (0.2%).

Research vessel survey relative abundance indices during 1978 indicated no significant declines in commercial size (>12 cm shell length) surf clam abundance in any of the three major offshore fishery areas during the year. Commercial quarterly mean catch per effort indices varied only slightly within offshore areas throughout 1978 further suggesting relative resource stability.

Survey catch per tow indices for immediate sized surf clams (9–11 cm shell length) have not fluctuated greatly since 1976, particularly off southern New Jersey and Delmarva. Hence, average recruitment to the fishery should be maintained during the next several years. Accordingly, if the distribution and level of annual Middle Atlantic landings in 1979 and 1980 approximate those in 1978, the commercially exploitable biomass should not change markedly in the immediate future. However, if total surf clam catches from the Middle Atlantic assessment areas greatly exceed the 30 million pound level in 1979 or 1980, accelerated declines in the abundance of clams >12 cm shell length will probably result. Growth rate analyses (Figure 11) (Jones et al., 1978) imply that the widespread pre-recruit resources, indicated during the December, 1978, and January, 1979, research vessel surveys off Delmarva and northern New Jersey will recruit to the fishery by 1981 or 1982. Significant increases in population size of harvestable clams should occur in these years if natural mortality remains constant and fishing mortality remains minimal on these pre-recruit clams until then. Future research vessel survey monitoring of the relative abundance of pre-recruits in 1980 and 1981 should more precisely establish the relative size and impact of these surf clams on harvestable resource abundance.

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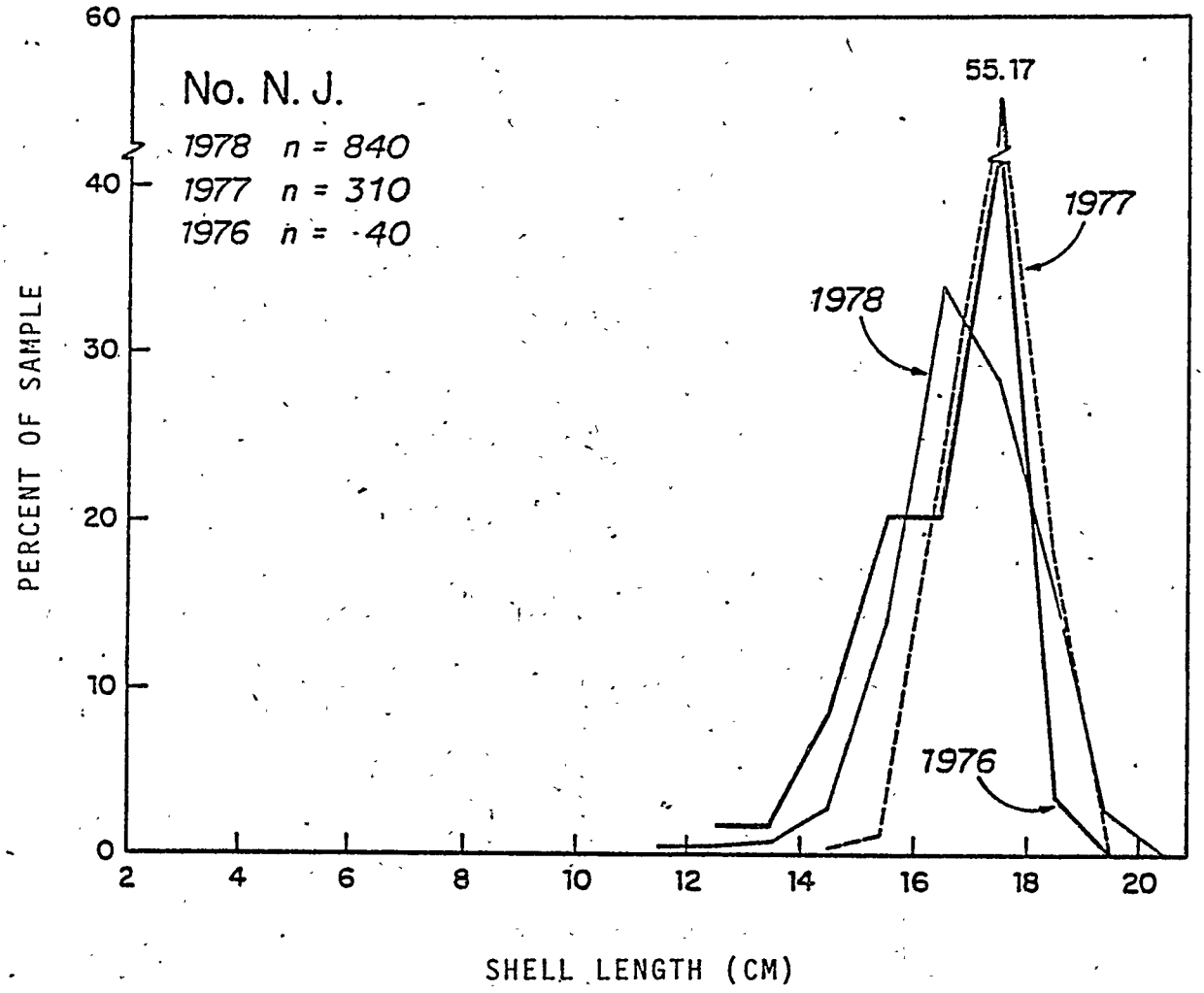
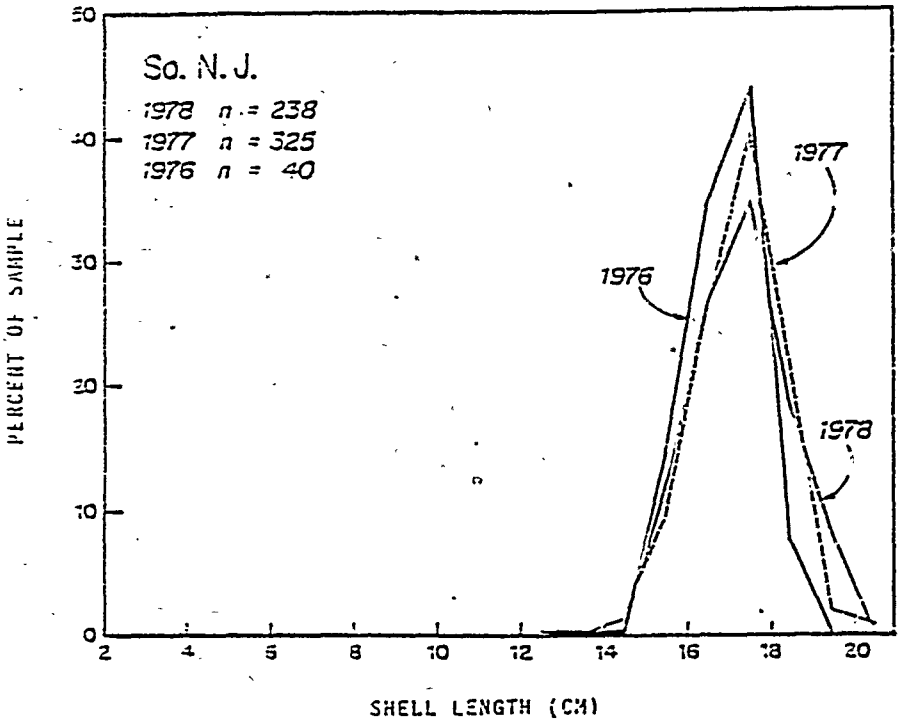


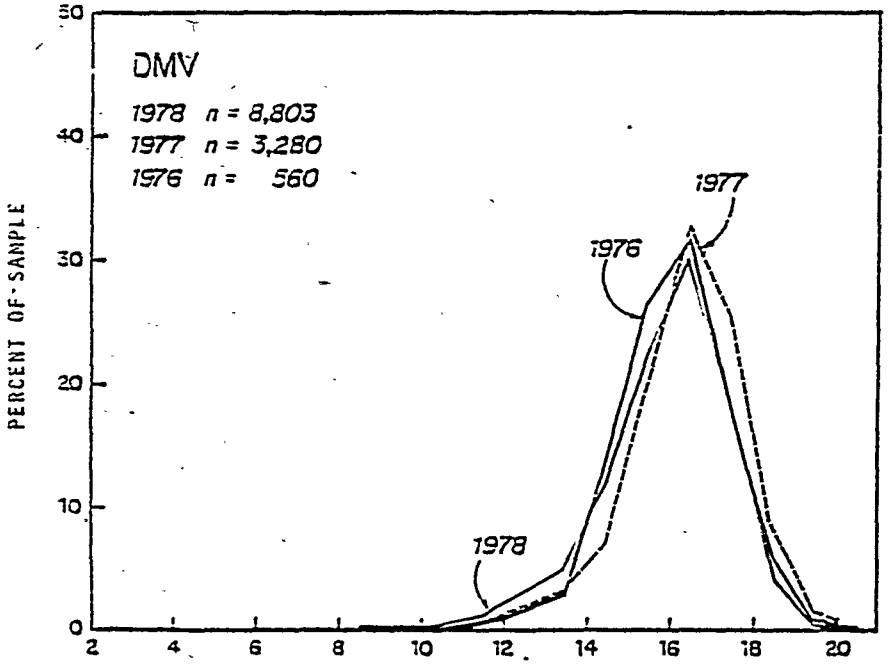
Figure 13

Length Frequency Composition Of Offshore Commercial Surf Clam Catches Off Northern New Jersey Sampled From 1976 Through 1978.



Length Frequency Composition Of Offshore Commercial Surf Clam Catches Off Southern New Jersey Sampled From 1976 Through 1978.

Figure 14



Length Frequency Composition Of Offshore Commercial Surf Clam Catches Off Delmarva Sampled From 1976 Through 1978.

Figure 15

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Ocean Quahog[1]

Introduction

Commercial utilization of Middle Atlantic (Cape Cod to Cape Hatteras) ocean quahog populations has increased rapidly in recent years. Total US landings in 1977 were 18.5 million pounds, a 235 percent increase from 1976 and 12-fold greater than the 1967–1976 average annual catch of 1.5 million pounds (Table 7). Landings from the FCZ during 1978 were about 20.2 million pounds, a 26 percent increase from 1977. Prior to 1976, virtually all US landings were derived from a small fishery off Rhode Island (Merrill et al., 1969; Parker and McRae, 1970; Serchuk et al., 1979a). The development of a fishery off New Jersey in 1976 and the Delmarva Peninsula in 1977 resulted in a sharp increase in annual landings; catches from these areas comprised 0 percent of the US total in 1975 but accounted for 87 percent in 1977. Population declines in Middle Atlantic surf clams exacerbated in 1976 by a massive kill of the clam stocks in the traditional New Jersey fishing grounds stimulated increased fishing for ocean quahogs (Ropes et al., 1979). The implementation of management measures enacted to conserve and rebuild offshore surf clam populations (Mid-Atlantic Fishery Management Council 1977; Murawski and Serchuk, 1979a; Serchuk et al., 1979b) further encouraged continued expansion of the Middle Atlantic ocean quahog fishery.

A grid-type sampling design was employed during all seven surveys with predetermined dredge stations located at either 9 or 19 km (5 or 10 nautical miles) intervals along transects coinciding with either LORAN lines or latitude-longitude bearings. Stations deeper than 80m (43.7 fathoms) were rarely occupied due to gear limitations and sampling emphasis on shallow-water surf clam beds. Standard tow data were post-stratified to appropriate area and 20m (10.9 fathoms) depth strata (Figure 16). Survey strata were designed to represent relatively homogeneous areas of bottom type, depth, and ecological conditions (Emery and Uchupi, 1972). For the analyses in this paper, grid samples within these strata were treated as if they were random since quahog beds within these zones were not thought to be systematically aggregated.

During most cruises survey coverage extended from Long Island through Delmarva; in some cruises southern Virginia-North Carolina and southern New England waters were also sampled. The southern-most boundary of the southern Virginia-North Carolina strata (not illustrated in Figure 16) extends southeast from Cape Hatteras to the 100 m (54.7 fathoms) isobath.

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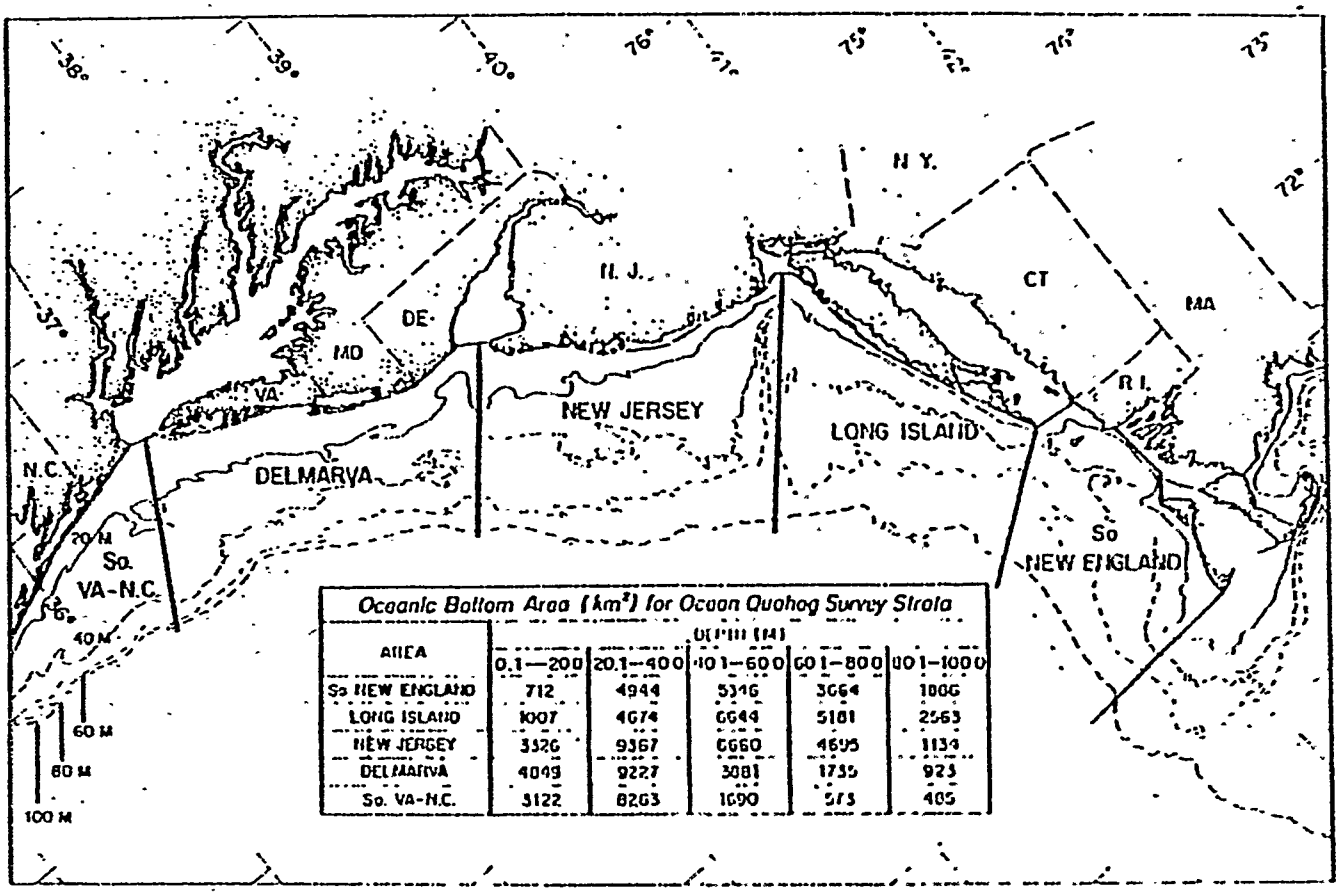
[1] The historical overview draws on a study of the US clam industries by T. Ritchie, University of Delaware.



Oceanic Bottom Area (km^2) for Ocean Quahog Survey Strata

AREA	DEPTH (M) 0.1—200	201—400	401—600	601—800	801—1000
So NEW ENGLAND	712	4944	5316	3064	1886
LONG ISLAND	1007	4674	6644	5181	2563
NEW JERSEY	3326	9367	6660	4695	1134
DELMARVA	4049	9227	3081	1735	923
So. VA-N.C.	3122	8263	1690	573	405

Figure 16. Ocean Quahog Survey Strata and Associated Bottom Areas in the Middle Atlantic

Table 7.—*Landings of Ocean Quahogs (Thousands of Pounds of Meat) From State Waters and the Fishery Conservation Zone (FCZ), 1967–1978*

Year	State waters	FCZ	Total
1967	44.1(1)		44.1
1968	224.9(1)		224.9
1969	639.3(1)		639.3
1970	1,746.0(1)		1,746.0
1971	2,030.3(1)		2,030.3
1972	1,399.9(1)		1,399.9
1973	1,457.2(1)		1,457.2
1974	804.6(1)		804.6
1975	1,254.4(1)		1,254.4
1976	1,446.2(1)	4,089.2	5,544.3
1977	2,464.6(2)	16,081.8(2)	18,544.3
1978		20,199.8(3)	

(1) Landings from Rhode Island, principally derived from within 3 miles of the coast.
(2) Data presented in "Fisheries of the United States, 1977", Current Fisheries Statistics No. 7200.
(3) Based on logbook records submitted to NMFS.

Studies of ocean quahog population dynamics, resource abundance and distribution, and life history are generally lacking. Merrill and Ropes (1969; 1970), Parker and McRae (1970) and Merill et al. (1969) summarized Middle Atlantic research vessel survey cruise data collected by the Bureau of Commercial Fisheries (BCF) during 1963–1967; however, quahog data obtained from the synoptic research surveys conducted during 1965–1977 have not been heretofore quantitatively analyzed. In this section recent research and commercial information on the distribution, relative abundance, and size compostion of Middle Atlantic ocean quahog populations are reviewed. In addition, estimates of resource equilibrium yields are derived from data on population biomass, age and growth, and assumptions of the rates of natural and fishing induced mortality.

Survey Design and Sampling Procedures

Ocean shellfish research vessel surveys were initiated in 1963 by the National Marine Fisheries Service's predecessor, the Bureau of Commercial Fisheries, primarily to elucidate the distribution and production potential of offshore Middle Atlantic surf clam populations. However, complete region-wide cruises were not begun until 1965 (Parker, 1966; Merrill and Ropes, 1969). Sufficient ocean quahog samples were taken in seven cruises from 1965–1977 which were useful for population assessment (Table 8).

Table 8.—*Ocean Shellfish Survey Cruises Used in the Analysis of the Dynamics of Ocean Quahog Populations*

Year	Cruise dates (month/day)	Research vessel	Dredge knife width (in)	Minutes per tow	Ring size or cage bar space (in)	Minimum shell length at full selection (in)
1977	Jan. 26 to Mar. 17	Delaware II	48	4	[b]1.18	2.76
1976	Apr. 6 to May 13	Delaware II	48	4	[b]1.18	2.76
1970[a]	Aug. 13 to Aug. 24	Delaware II	48	4	[b]1.18	2.76
1969	June 20 to July 2	Albatross IV	30	5	[c]2.00	2.48
1966	Aug. 14 to Aug. 27	Albatross IV	30	5	[c]2.00	2.48
1965(2)	Oct. 27 to Nov. 14	Undaunted	30	5	[c]2.00	2.48
1965(1)	May 26 to June 23	Undaunted	30	5	[c]2.00	2.48

[a]Submersible pumping system used.
[b]Terminal cage used.
[c]Terminal ring bag used.

Research vessels and sampling gear used in each of the recent surveys are listed in Table 8. In the first four surveys (1965–1973) an hydraulic clam dredge with a 30 inch wide knife was used while the latter three cruises used a 48 inch wide dredge. Details of the construction and operation of the dredges are described and illustrated in Parker (1966; 1971), Standley and Parker (1967), Ropes et al. (1969), and Parker and McRae (1970).

After each tow, contents of the dredge were dumped, sorted by species and enumerated. Volume determinations were made if the catch exceeded 1 bushel. The usual practice was to take a 1 bushel subsample for length frequency analysis. Total shell length (longest dimension) was recorded to the nearest cm for quahogs that were whole or broken but measurable. Total live weight of the catch was not routinely recorded because of the variability in weights of quahogs due to contamination with substrate from the dredging process. Hence, catch weights were derived by applying appropriate areal length-weight equations (Table 9; Murawski and Serchuck, 1979b) to the prorated length frequency distribution of each tow, viz:

$$\hat{B} = \sum_{L=1}^{15} cL_i^b N_i$$

where

$\hat{B}$ = total calculated catch in weight per tow
L_i = mean shell length of quahogs in 10 mm size groups i, expressed as the mid point of the size group (i.e., for size groups 0–9, 10–19, . . . 140–149 mm, L_i = 4.5, 14.5 . . . 144.5 mm).
N = total number of quahogs caught within size group i
b = slope of the appropriate areal length weight equation (Table 9)
c = antilog of the intercept of the appropriate areal length weight equation (Table 9).

Table 9.—*Statistics Describing Regression Equations Between Shell Length (mm) and Drained Meat Weight (g) for Ocean Quahogs*

Area	Intercept (a)	Slope (b)	Standard error of b	Correlation coefficient (r)
Southern New England—Long Island	−9.124283	2.774989	0.0199	0.9670
New Jersey	−9.847183	2.949540	0.0294	0.9546
Delmarva—North Carolina	−9.042313	2.787987	0.0600	0.9172

Source: Murawski and Serchuck, 1979b.

The prorated length frequency distribution of each tow was derived from the measured subsamples by multiplying the number of quahogs in each size group by the ratio of the total number caught to the total number measured. For tows in which no length samples were taken, the appropriate strata cumulative length frequency distributions were applied to catch.

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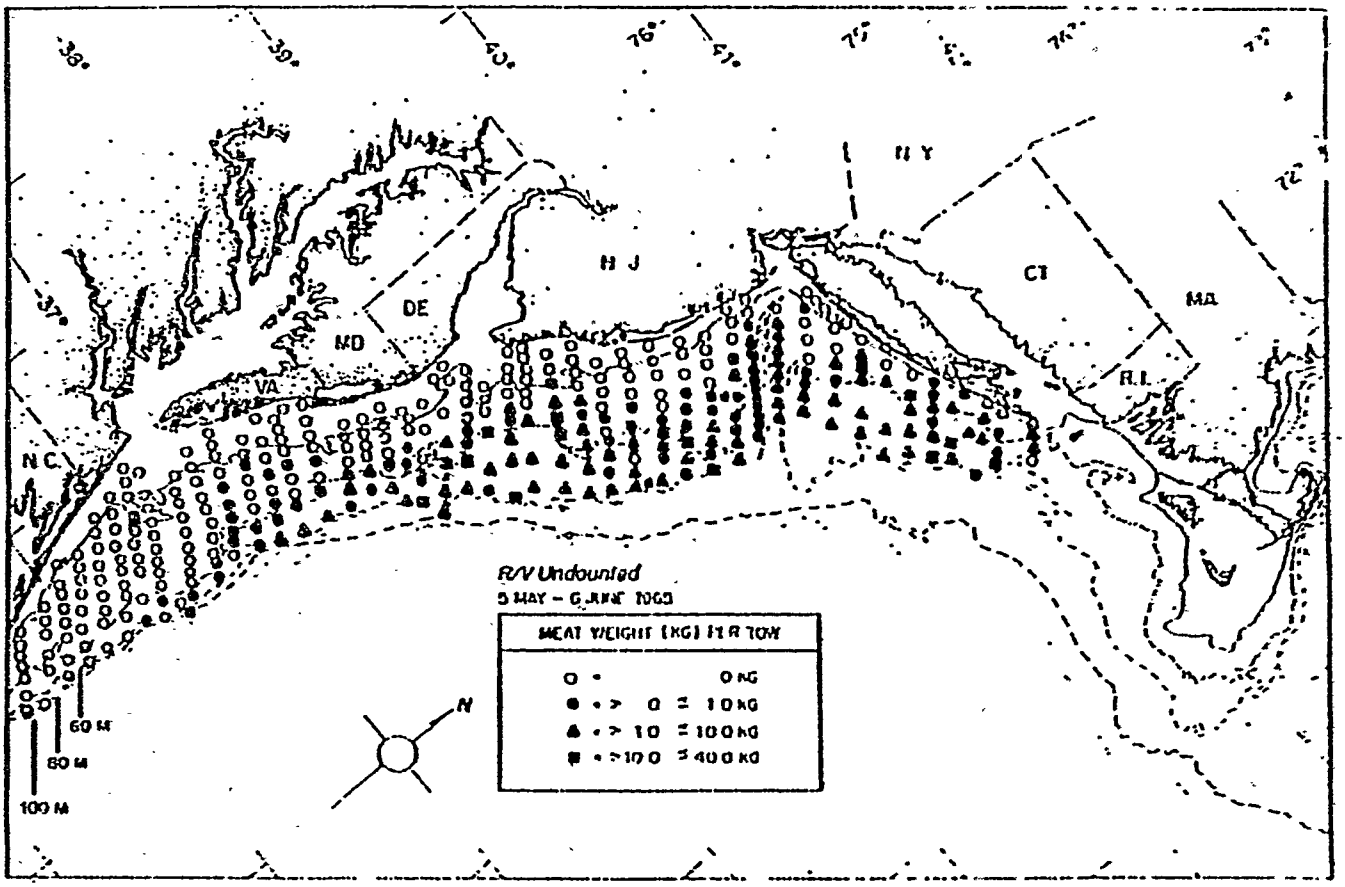

Figure 17. Station Locations and Catches in Meat Weight (Kg) During the R/V UNDAUNTED Cruise, 5 May - 6 June, 1965. Several Stations Near Cape Hatteras in Which No Quahogs Were Taken are Not Illustrated

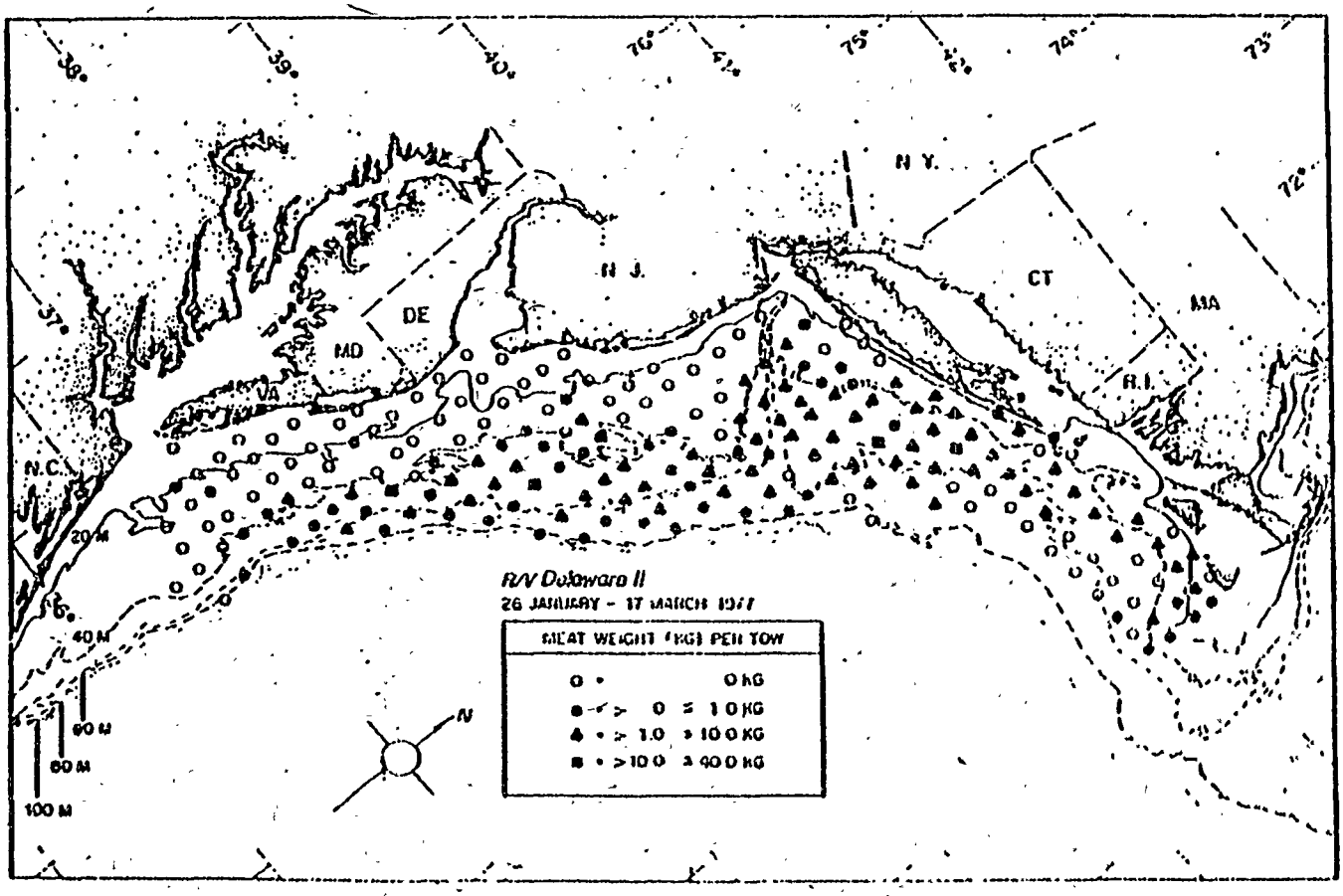

Figure 18. Station Locations and Catches in Meat Weight (Kg) During the R/V DELAWARE II Cruise, 26 January - 17 March, 1977

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Since tow duration and gear varied slightly between survey cruises, individual tow catches (numbers and weight) were standardized to a 48 in. wide dredge and four minute tow. Thus, the 1965–1969 tow data were multiplied by 1.28; the product of the linear correction factors; 1.6 (the ratio 48/30), and 0.8 (the ratio 4 minutes/5 minutes). Odometer readings (n = 217) from the 1965 and 1969 surveys indicated that during a five minute tow an average of 64.74 m^2 of bottom was covered by the 30 in. wide dredge. Thus, approximately 82.87 m^2 was sampled during a standardized tow.

Abundance Indices

Standardized mean catch per tow data (numbers and meat weight) of ocean quahogs, by area/depth strata, for the 1965–1977 shellfish surveys are prsented in Table 10. The relative distribution of biomass from the 1965 (spring) and 1977 surveys (Figures 17 and 18) are indicative of the time series of data.

Table 10.—*Catch per Tow Data of Ocean Quahogs, by Area/Depth Strata for Ocean Shellfish Surveys, 1965–1977**

Area			Catches in numbers		Catches in meat weight (kg)	
Depth (m)	Cruise	Number of tows	Mean	Standard deviation	Mean	Standard deviation
SOUTHERN NEW ENGLAND						
20.1–40.0	1977	11	20.00	34.83	0.5326	0.9315
	1970	4	183.50	337.03	4.5183	8.2074
40.1–60.0	1977	15	77.87	97.10	1.7288	2.2351
60.1–80.0	1977	10	15.80	37.14	0.3615	0.8231
Long Island						
0.1–20.0	1977	2	0.00	0.00	0.0000	0.0000
	1976	6	4.00	9.80	0.0785	0.1923
	1970	4	8.00	16.00	0.1940	0.3880
	1969	4	0.64	1.28	0.0246	0.0492
	1966	3	0.00	0.00	0.0000	0.0000
	1965(2)	17	0.00	0.00	0.0000	0.0000
	1965(1)	10	0.13	0.40	0.0031	0.0098
20.1–40.0	1977	14	32.64	48.21	0.9444	1.2397
	1976	26	103.72	185.80	2.9419	5.2644
	1970	14	265.36	320.49	6.3862	7.2196
	1969	25	149.20	242.99	3.5362	5.2225
	1966	21	130.07	266.08	3.5116	7.0453
	1965(2)	20	139.71	320.66	3.3973	7.4062
	1965(1)	29	114.45	215.13	2.8899	5.7174
40.1—60.0	1977	17	243.24	171.43	3.2236	3.2971
	1976	36	293.54	206.08	6.1844	4.2529
	1970	21	214.81	203.15	5.2784	5.2967
	1969	23	136.63	197.19	2.9060	3.9825
	1966	1	0.00	0.00	0.0000	0.0000
	1965(1)	26	208.29	179.88	4.9551	4.8447
60.1–80.0	1977	15	134.40	195.73	2.6715	4.2497
	1076	18	100.83	169.15	2.2175	3.7895
	1970	6	13.17	20.59	0.1925	0.2415
	1969	21	39.13	104.30	0.8945	2.4139
80.1–100.0	1976	2	0.00	0.00	0.0000	0.0000
NEW JERSEY						
0.1–20.0	1977	7	0.00	0.00	0.0000	0.0000
	1976	12	0.00	0.00	0.0000	0.0000
	1970	11	0.18	0.40	0.0048	0.0115
	1969	12	0.00	0.00	0.0000	0.0000
	1966	17	0.00	0.00	0.0000	0.0000
	1965(2)	23	0.11	0.53	0.0032	0.0156
	1965(1)	19	0.00	0.00	0.0000	0.0000
20.1–40.0	1977	24	24.62	63.79	0.8451	1.9455
	1976	34	55.53	166.12	1.6464	4.4192
	1970	45	28.69	72.11	1.7182	4.3060
	1969	52	51.15	229.65	1.2896	4.5480
	1966	82	30.02	103.60	1.1279	3.4781
	1965(2)	49	5.12	10.15	0.1933	0.3682
	1965(1)	58	67.82	278.01	1.7108	5.1558
40.1–60.0	1977	26	114.00	190.43	3.4920	5.7138
	1976	20	146.55	261.82	4.3251	7.5912
	1970	23	148.04	160.00	7.5929	8.3864
	1969	14	65.92	78.73	1.8244	2.1585
	1966	29	116.17	203.41	4.2543	7.0372
	1965(2)	3	322.56	527.84	8.6975	13.9972
	1965(1)	33	179.86	232.02	5.1960	6.9847
60.1–80.0	1977	12	49.92	74.97	1.3658	2.2556
	1976	9	71.56	69.96	2.1488	2.2201
	1970	4	307.75	263.91	8.9548	7.6338
	1969	17	98.03	191.75	2.3772	3.9401
80.1–100.0	1977	1	8.00	0.00	0.1441	0.0000
	1976	6	1.67	2.58	0.0572	0.0868
	1969	1	2.56	0.00	0.1067	0.0000

Table 10.—*Catch per Tow Data of Ocean Quahogs; by Area/Depth Strata for Ocean Shellfish Surveys, 1965–1977*—Continued*

Area			Catches in numbers		Catches in meat weight (kg)	
Depth (m)	Cruise	Number of tows	Mean	Standard deviation	Mean	Standard deviation
DELMARVA						
0.1–20.0	1977	9	0.00	0.00	0.0000	0.0000
	1976	13	0.00	0.00	0.0000	0.0000
	1970	13	0.00	0.00	0.0000	0.0000
	1969	23	0.00	0.00	0.0000	0.0000
	1966	14	0.00	0.00	0.0000	0.0000
	1965(2)	27	0.00	0.00	0.0000	0.0000
	1965(1)	21	0.00	0.00	0.0000	0.0000
20.1–40.0	1977	32	0.75	3.71	0.0360	0.1795
	1976	31	9.16	35.84	0.3269	1.2531
	1970	34	1.79	5.45	0.0838	0.2706
	1969	48	2.32	12.23	0.0787	0.4176
	1966	63	1.85	6.23	0.0674	0.2318
	1965(2)	41	1.65	6.74	0.0592	0.2318
	1965(1)	64	3.18	9.31	0.0890	0.2581
40.1–60.0	1977	11	137.73	351.38	3.6329	8.2199
	1976	13	38.23	42.77	1.4657	1.4248
	1970	9	105.78	242.62	2.4654	4.4750
	1966	11	69.35	87.64	2.8033	3.6442
	1965(2)	4	7.36	11.37	0.2124	0.2579
	1965(1)	30	125.65	222.56	3.1341	4.5993
60.1–80.0	1977	6	51.00	49.67	1.3620	1.1011
	1976	9	48.44	80.56	1.4827	1.8768
	1970	4	17.75	30.40	0.6263	1.0347
	1969	19	6.20	12.48	0.2145	0.4296
	1965(1)	2	14.72	19.01	0.4570	0.6007
80.1–100.0	1977	1	0.00	0.00	0.0000	0.0000
SOUTHERN VA—N. CAROLINA						
0.1–20.0	1976	6	0.00	0.00	0.0000	0.0000
	1970	5	0.80	1.79	0.0069	0.0153
	1969	5	0.00	0.00	0.0000	0.0000
	1965(2)	9	0.00	0.00	0.0000	0.0000
	1965(1)	6	0.00	0.00	0.0000	0.0000
20.1–40.0	1976	18	0.33	1.41	0.0128	0.0544
	1970	5	0.20	0.45	0.0101	0.0226
	1969	13	0.00	0.00	0.0000	0.0000
	1965(2)	16	1.04	3.54	0.0320	0.0991
	1965(1)	59	0.00	0.00	0.0000	0.0000
40.1–60.0	1970	1	8.00	0.00	0.3077	0.0000
	1969	1	3.84	0.00	0.1202	0.0000
	1965(2)	6	6.19	6.60	0.1692	0.1809
	1965(1)	15	4.01	11.01	0.1520	0.4418
60.1–80.0	1970	2	5.50	7.78	0.1728	0.2444
	1965(2)	2	0.00	0.00	0.0000	0.0000
	1965(1)	2	0.00	0.00	0.0000	0.0000

*Standardized to catch of 48 in. wide dredge, towed for 4 minutes.

A total of 10% (171) of the stations sampled between 1965 and 1977 were located within the southern Virginia-North Carolina area. Yearly strata catch per tow indices exhibited marked variation reflecting the sporadic distribution of quahogs in this region. However, 95% confidence limits about the mean catches per tow ($\pm 2\sqrt{\sigma^2}/\sqrt{n}$) suggest that differences over time within strata were not significant. Abundance indices for southern Virginia-North Carolina were the lowest of all areas for each depth range from 20.1–80.0 m (11–43.7 fathoms).

The ocean quahog resource off the Delmarva Peninsula occurs in waters deeper than 20 m (11 fathoms). Survey indices for depths greater than 20 m were significantly higher than corresponding strata to the south. The 40.1–60.0 m (22–32.8 fathoms) strata usually exhibited the highest relative abundance of quahogs. Differences in catch per tow values over time were generally not significant, although means were highly variable, particularly in the 40.1–60.0 m interval. Approximately 31% (552) of the stations sampled during the period were from this area.

The relative abundance of quahogs off New Jersey in waters greater than 40.0 m deep was similar to that off Delmarva. However, indices for the 20.1–40.0 m depth stratum were significantly greater than off Delmarva. The largest percentage (36%) of the stations sampled during the period were off New Jersey.

Average catch rates from Long Island strata were generally greater than corresponding strata in other areas. The 40.1–60.0 m depths exhibited the highest mean catches per tow, consistent with trends for southern Virginia-North Carolina, Delmarva, and New Jersey. Abundance indices did not apparently vary significantly during the time period. The increased shoreward abundance of quahogs off Long Island may reflect generally cooler waters there than further to the south especially during the summer. A total of 22% of the stations were located off Long Island.

Limited data for the southern New England area were collected during cruises in 1970 and 1977. The lack of an extensive time series precludes assessment of the significance of changes in abundance over time. Data for the 1977 survey do, however, indicate that trends in relative abundance by depth are consistent with other areas.

Size Composition

Survey catches of ocean quahogs were comprised of individuals ranging in size from 2–14 cm (0.75"–5.5") shell length (longest dimension). Dredge specifications and shell morphometry data indicate that minimum shell lengths at full selection ranged from 6–7 cm for the two survey dredges used (Table 8). Shell length frequency distributions for most area/depth strata were unimodal; modal sizes usually ranged from 6–10 cm. Little change in frequency distributions within strata occurred during 1965–1977, suggesting relative resource stability. Substantial differences in length composition, however, were evident between strata and areas. The largest quahogs sampled were from off New Jersey with few individuals greater than 11.9 cm (4.7") taken off southern New England, Long Island, Delmarva, or southern Virginia-North Carolina. Most of the New Jersey quahogs greater than 12 cm were from 20.1–40.0 m depths, with progressively fewer large quahogs in deeper waters. The greatest proportion of small quahogs (<5 cm) were from Long Island with fewer small quahogs in other areas. Individuals less than 4 cm were rarely taken from depths shallower than 40 cm in any area, perhaps indicating poor recruitment to those strata during the study period.

Minimum Population Size

Statistical analyses of relative abundance indices (Table 10) revealed little significant change in quahog populations over time. Stable population size is further suggested by the lack of significant fluctuation in length frequency composition, and the relative scarcity of small individuals. Hence, catch per tow data for all years were combined to compute single indices for those area/depth strata with sufficient information (Long Island-Delmarva). The highest abundance in numbers and meatweight per tow was in waters 40.1–60.0 m deep off Long Island and New Jersey (Table 11).

Estimates of population density—the absolute number and weight per m^2—were calculated assuming the dredge

sampled an average of 82.87 m^2 per tow. These estimates must be considered minimum because the dredge is not thought to be 100% efficient in sampling clam populations. Also, only clams above a certain size will be fully retained by the dredge. Population size estimates were derived for quahogs of all sizes taken in the research sampling. Estimated densities ranged from 0.02–2.30 individuals and 0.02–60.18 g/m^2.

The minimum population size of quahogs inhabiting the area from Long Island through Delmarva was computed utilizing minimum density calculations and corresponding stratum areas (Figure 16). Population size for each stratum was derived by multipling number and weight per m^2 by the number of m^2 of ocean bottom in each. Total population size is hence the sum of the strata estimates (Table 11). A total Middle Atlantic resource of 56.6 billion quahogs and 1.5 million mt of meat was estimated. The distribution of total biomass was greatest off Long Island (46%) followed by New Jersey (44%) and Delmarva (10%). Average meat weights were largest off New Jersey (32 g) (about 1 ounce) followed by Delmarva (28 g) and Long Island (23 g).

Table 11.—*Mean Catches per, Tow Average Densities, and Minimum Population Size Estimates for Ocean Quahogs From Long Island—Delmarva Sampled During NMFS Shellfish Surveys, 1965–1977*

Area and depth (m)	Number of tows	Average catch/tow		Average density (m^2)		Minimum population size estimate	
		Numbers	Meat weight (kg)	Numbers	Meat weight (g)	Numbers	Meat weight (mil. lb.)
LONG ISLAND							
0.1–20.0	46	1.30	0.0300	0.02	0.3611	15,809,900	0.8
20.1–40.0	149	129.65	3.3089	1.57	39.9288	7,312,331,312	411.4
40.1–60.0	124	223.96	4.9868	2.70	60.1762	17,956,052,870	881.4
60.1–80.0	60	78.86	1.6555	0.95	20.0977	4,930,390,147	228.5
80.1–100.0	2	0.00	0.0000	0.00	0.0000	0	0
NEW JERSEY							
0.1–20.0	101	0.05	0.0013	0.00	0.0151	1,792,174	0.1
20.1–40.0	344	38.01	1.2262	0.46	14.7967	4,296,491,970	305.6
40.1–60.0	148	138.48	4.7190	1.67	56.9446	11,129,064,200	836.1
60.1–80.0	42	98.59	2.6657	1.19	32.1673	5,585,360,331	332.9
80.1–100.0	8	2.57	0.00743	0.03	0.8960	35,202	2.2
DELMARVA							
0.1–20.1	120	0.00	0.0000	0.00	0.0000	0	0
20.1–40.0	313	2.77	0.0968	0.03	1.1681	308,736,895	23.7
40.1–60.0	78	96.49	2.6527	1.16	32.0104	4,518,622,965	273.9
60.1–80.0	40	24.00	0.7253	0.29	8.7523	502,578,436	33.5
80.1–100.0	1	0.00	0.0000	0.00	0.0000	0	0
Total						56,592,433,505	3,331.1

Equilibrium Yields

The amount of resource available for sustainable harvesting has been generally thought of as the production in excess of that needed to maintain the population at a certain stock size, and has thus been termed surplus production (Schaefer, 1954; Gulland, 1971; Sissenwine, 1978). For populations exhibiting logistic growth, the point of maximum surplus production occurs at the inflection of the population growth function, corresponding to a level of 50 percent of the virgin stock size (Schaefer 1954). Methodologies to compute surplus production are based on historical catch and effort data for established fisheries; however, the available data for the Middle Atlantic ocean quehog resource are not sufficient for these purposes. Gulland (1971) proposed a simplistic model for calculating maximum sustainable yield (MSY) when adequate data for more sophisticated analyses are lacking. Maximum sustainable catch (C_{max}) is related to the optimum relative stock size ($X = \frac{1}{2}$ virgin stock size, B_o) and the instantaneous natural mortality rate (M) by:

$$(C_{max} = (X)\,(M)\,(B_o)$$

It is recognized that the actual population will not follow the formula precisely but it is likely some deviations may compensate each other (Gulland, 1971). An additional term has been included in this formula to reflect fishing mortality caused by the dredge damaging quahogs that are not harvested. The actual rate of additional mortality is not precisely known but has been tentatively estimated at between 40 and 60% of the amount harvested (Mid-Atlantic Fishery Management Council, 1977). Calculations of the natural mortality rate of ocean quahogs have not been reported. However, recent studies (Dr. I. Thompson, Princeton University, personal communication) have suggested that a significant proportion of the resource may live longer than 100 years. Values have been incorporated of the instantaneous natural mortality rate (M) into the calculations of MSY ranging from 0.01 (36.8% of the population living to 100 years) to 0.10 (<0.1% of the population living to 100 years). The latter value is similar to the caluculated mortality rate of the sea scallop, *Placopecten magellanicus*, which inhabits much of the quahog's range in the Middle Atlantic (Merrill and Posgay, 1964).

Caculations of MSY for the ocean quahog resource from Long Island—Delmarva are presented in Table 12. Estimates of virgin biomass are those expanded from stratified catch per tow information from surveys, and therefore, must be considered minimum. Values of MSY vary considerably depending primarily on the assumed natural mortality rate. The natural mortality rate of quahogs is probably less than that of scallops considering the more dynamic nature of the sea scallop resource (Serchuk et al., 1979c). If $M < 0.05$ for quahogs (>0.7% survive to 100 years), then MSY for the area Long Island—Delmarva would be expected to be less than 50.7 million pounds per year. The ocean quahog fishery operating in the FCZ harvested 15.0 million pounds in 1977, and an estimated 20.2 million pounds in 1978. However, most of the offshore Middle Atlantic landings were derived from the New Jersey and Delmarva areas, which account for 54% of the total calculated biomass from Long Island—Delmarva. Thus, if the relative areal distribution of landings does not change, MSY for the area being fished is probably less than 27.0 million pounds (50.0 x 0.54).

Further refinement of MSY estimates will be possible as additional information on age and growth, breakage of unharvested quahogs and catch/effort data become available. However, it should be noted that the Schaefer model implies that maximum surplus production will occur when the standing stock is reduced to one-half of the virgin level. Therefore, harvests above MSY in the initiitial fishing years should not cause irreparable harm to the resource. If, however, subsequent evidence suggests rapid resource depletion and little concurrent recruitment to the population,

appropriate constraints on the fishery should be considered.

Table 12.—*Calculations of Maximum Sustainable Yield (MSY) for Ocean Quahogs From Long Island—Delmarva*

(M=instanteous natural mortality rate, B_o=biomass in meat weight available to the fishery, X=proportion of virgin stock size for MSY from Schaefer yield model, P=amount of additional biomass lost from dredge mortality of unharvested quahogs expressed as proportion of amount caught)

[weights in thousands of pounds]

(M)	(B_o)	X	P	MSY
0.01(a).....	3,331,127	0.5	0.4	9,993
			0.5	8,329
			0.6	6,662
0.02(b).....	3,331,127	0.5	0.4	19,986
			0.5	16,655
			0.6	13,324
0.027(c).....	3,331,127	0.5	0.4	26,983
			0.5	22,486
			0.6	17,989
0.05(d).....	3,331,127	0.5	0.4	49,967
			0.5	41,639
			0.6	33,312
0.10(e).....	3,331,127	0.5	0.4	99,934
			0.5	83,279
			0.6	68,622

(a) Equivalent to 36.8 percent of the population living to 100 years.
(b) Equivalent to 13.5 percent of the population living to 100 years.
(c) Equivalent to 6.7 percent of the population living to 100 years.
(d) Equivalent to 0.7 percent of the population living to 100 years.
(e) Equivalent to < 0.1 percent of the population living to 100 years.

Offshore New England Surf Clam Resources [1]

Introduction

Surf clams occur on the northwest Atlantic Continental Shelf from the southern Gulf of St. Lawrence to Cape Hatteras, North Carolina. Numerous studies have alluded to the general distribution of surf clams (Merrill and Ropes, 1969; Merrill and Webster, 1964; Ropes et al., 1969) and the fishery potential in various localities (Belding, 1910; Caddy and Billard, 1976; Schneider et al., 1977; Serchuk et al., 1979; Murawski and Serchuk, 1979). Research vessel clam survey cruises conducted by the NMFS occupied sampling statons in southern New England as well as Middle Atlantic Bight waters during several years. This discussion considers data derived from various sources on the distribution, relative abundance, and fishery potential of surf clams, particularly as they relate to offshore (beyond 3 miles) waters east of Montauk Point, New York.

Distribution

Merrill and Ropes (1969) charted the locations of surf clam occurrence from Cape Hatteras to Nova Scotia (Figure 19). These distribution records were derived from: (1) Records of the U.S. National Museum, (2) the Museum of Comparative Zoology at Harvard University, (3) sea scallop dredge samples from a Middle Atlantic cruise of the R/V DELAWARE I (Merrill, 1962), (4) Campbell grab samples from cruises of the R/V GOSNOLD (Emery et al., 1965; Wigley and Emergy, 1968), (5) surf clam dredge sampes from the 1965 cruises of the R/V UNDAUNTED, and (6) miscellaneous records of bottom samples by the R/V ALBATROSS.

Distribution records are most numerous for the Middle Atlantic areas west of Montauk Pt., due in part to the emphasis on sampling of the most productive commercial clamming area (Figure 19). East of Hudson Canyon records of occurrence indicate the resource is concentrated inshore. The distribution of surf clams in waters greater than 20 m deep from Long Island to Georges Bank is sporadic. In contrast, from New Jersey to Cape Hatteras clams are distributed much more evenly over the Continental Shelf (Figure 19). Records of occurrence for ocean quahog, also presented by Merrill and Ropes (1969), suggest that this species is widely distributed in offshore waters from Long Island to Georges Bank. Thus, the paucity of surf calm samples from the same area implies they are relatively scarce.

Most records of occurrence off New England are from inshore Rhode Island and Massachusetts waters. Surf clam occurrences are numerous in inshore waters from Cape Cod to Cape Ann. Off northern New England and Nova Scotia surf clams appear to be scarce.

The factors that control larval settling and recruitment to the adult surf clam populations are poorly understood. Nevertheless, distribution it probably in part controlled by depth and sediment characteristics.

Merril and Ropes (1969) report the maximum depth at which live surf clams were sampled as 66 m. The average depth of surf clam occurrence in Middle Atlantic waters, during transect sampling, was 29 m, however, few clams were taken at depts greater than 40 m. Substrate characteristics may also be important as a factor influencing the success of larval settlements. The distribution of median sediment diameters of surface samples from the Atlantic shelf (Emery and Uchupi, 1972) is presented in Figure 20. Interestingly, areas where median grain size exceeds 40 appear virtually devoid of surf clams (Figures 19 and 20).

Relative Abundance

Belding (1910) commented on the distribution of surf clams off the Massachusetts coast by posing the question "What is the present extent of the sea clam beds in Massachusetts?" He continuted:

> No large beds, as formerly existed at Dennis, Nantucket, and Chatham are known to the fishermen, although sea clams are found in more or less abundance at several places along the Massachusetts Coast. The largest bed at the present time is a Monomoy Point, Chatham. In Plum Island Sound and Ipswich Bay sea clams are found on the low flats, but the fishing is limited to the low-course tides. Off Nahant, Hull and Winthrop are scattered beds of these large clams, which are occasionally washed ashore after storms. Sea clams are gathered off Plymouth by the fishermen. The numerous bars off Barnstable, Yarmouth, and Dennis on the north side of the Cape furnish all extensive territory, while along the inner side of the Cape small beds are located at Wellfleet, Truro, and Brewster. At Provincetown the fishermen thoroughly dredge the beds at Wood End in their search for bait."
>
> "On the outside of the Cape many shells are found on the beaches, showing that beds exist on the ocean side. At Chatham there is a fine bed at the present time. The south of Dennis formerly was a great locality for this mollusk, but few are not found. At Nantucket sea clams are now gathered in many parts of the harbor, principally from a large bed on Hussey shoal. Sea clams are also found near Cape Poge and on the shores of Martha's Vineyard. In certain waters of the Commonwealth the shells of this mollusk form the greater part of the shell deposits on the ocean bed. The principal fisheries are at Chatham, Provincetown, and Plymouth."

Belding's observations are in general agreement with distribution records plotted by Merrill and Ropes (1969). Distribution maps recently issued by the Massachusetts Executive Office of Environmental Affairs confirm the earlier observations. Locations of greaters abundance off Massachusetts are apparently near Horseneck Beach in Westport, the South Beach of Martha's Vineyard, and west of Nantucket. Extensive inshore beds are also located in Wellfleet Harbor, and along the shore of the outer Cape.

Limited sampling of the offshore bivalve resource off southern New England was accomplished during R/V DELAWARE II shellfish assesment surveys in 1977 and 1978. Relative abundance of surf clams was monitored during these surveys, and samples were taken with a 48-inch wide hydraulic shellfish dredge. Stations were either randomly selected within strata (1978), or located along transects and poststratified (1977) (Figures 1 and 21).

In the area from Montauk Pt. to Nantucket, surf clams were taken at 19%

[1] The following discussion and figures are taken from: Murawski, S. A. 1979. On the question of offshore surf clam, *Spisula solidissima*, resources off New England, NMFS, Woods Hole Laboratory Reference No. 79-22: 15 p.

(7/37) of the stations in 1977, and 6% (2/35) in 1978. In contrast, the Delmarva Peninsula area, which supports the bulk of the offshore commercial fishery, yielded surf clams at 56% of the stations occupied in 1977. Most of the New England surf clam catches during the two surveys were derived from strata 95 and 41 (Figure 21). The largest single survey catch from the New England stations was 220 individuals.

Shell length frequency distributions of surf clams sampled from southern New England, New Jersey, and Delmarva during the 1977 and 1978 surveys are presented in Figures 22 and 23. A significant proportion of the clams sampled from New England water were greater than 12 cm shell length, which appears to be the minimum shell size normally taken in the Middle Atlantic offshore fishery (Murawski and Serchuk, 1979). However, the modal length of clams > 12 cm along was generally smaller off southern New England than farther to the south.

Fishery Potential

The first organized fishery for surf clams began in the 1870s off Cape Cod. The meats were used primarily for bait in the handline fishery for cod and haddock. However, the clam resource in the Cape Cod region was severely depleted after the turn of the century (Ropes et al., 1969). Belding (1910) commented on the variability of the Massachusetts fishery:

> If reliance can be placed on historical writing, the present generation perhaps is witnessing the passing of the sea clam. While it is indeed true that the large beds, which once made Chatham, Dennis and Nantucket famous for their bait fishery, have passed away, the lack of authentic statistical figures for the past years, and the erratic nature nature of the fishery, large beds appearing first in one locality and then in another, lasting oonly a few years before they become exhausted, render any conclusions indefinite. Comparing the yield of 1907 and 1877 for Cape Cod, as given by E. Ingersoll, we would find a decrease from three thousand barrels to a few hundred, which would imply a serious decline, were it not know that in 1877 the large bed at Dennis was in a flourishing condition. Nevertheless, it has been clearly demonstrated that whenever a large bed in any locality has been discovered it has been depleted in the course of seven years by overfishing. There are several specific examples of the depletion of large natural beds by ill-advised methods of fishing, which have contributed to the decline or the fishery.

Total New England surf clam landings are presented in Table 13. From 1950–1978 annual New England landings averaged 136,000 pounds, and 0.4% of the US total. The preponderance of distribution data herein reviewed suggests that most of the New England surf clam resource exists in inshore areas (less than 3 miles from shore), thus, it is probable that virtually all New England catches were derived from within State waters. Offshore landings from New England waters during 1978 were reported to be 27,000 pounds, although the accuracy of these figures is unknown (Murawski and Serchuk, 1979). Thus, offshore landings may have been but 3% of the region's 1978 total of 812,000 pounds.

Research survey data suggest that abundance of surf clams may be relatively high in some offshore locations south of Cape Cod. Surf clams from the these areas are of a commercially usable size (greater than 12 cm), although modal sizes of harvestable clams are smaller off southern New England than in the traditional offshore surf clam beds off New Jersey and the Delmarva Peninsula. Although some survey stations exhibited relatively high densities, the frequency of occurrence of surf clams in dredge samples off southern New England was less than in the commercial fishing areas off New Jersey and Delmarva. Long-term landings from southern New England offshore waters will probably not approach those from traditional offshore fishing grounds due to the relatively high risk of damaging harvesting gear and the sporadic distribution and ephemeral nature of the surf clam resource in this area (Belding, 1910). The bottom topography of New England waters north of Cape Cod clearly obviates large-scale dredging operations with traditional surf clam gear used in the Middle Atlantic fishery (Emery and Uchupi, 1972; Dept. of Commerce, 1971). Although few survey data exist for offshore waters north of Cape Cod, the probability of a significant harvestable resource in this area is remote (Merrill and Ropes, 1969). The magnitude of the surf clam resource on Georges Bank is presently unkown.

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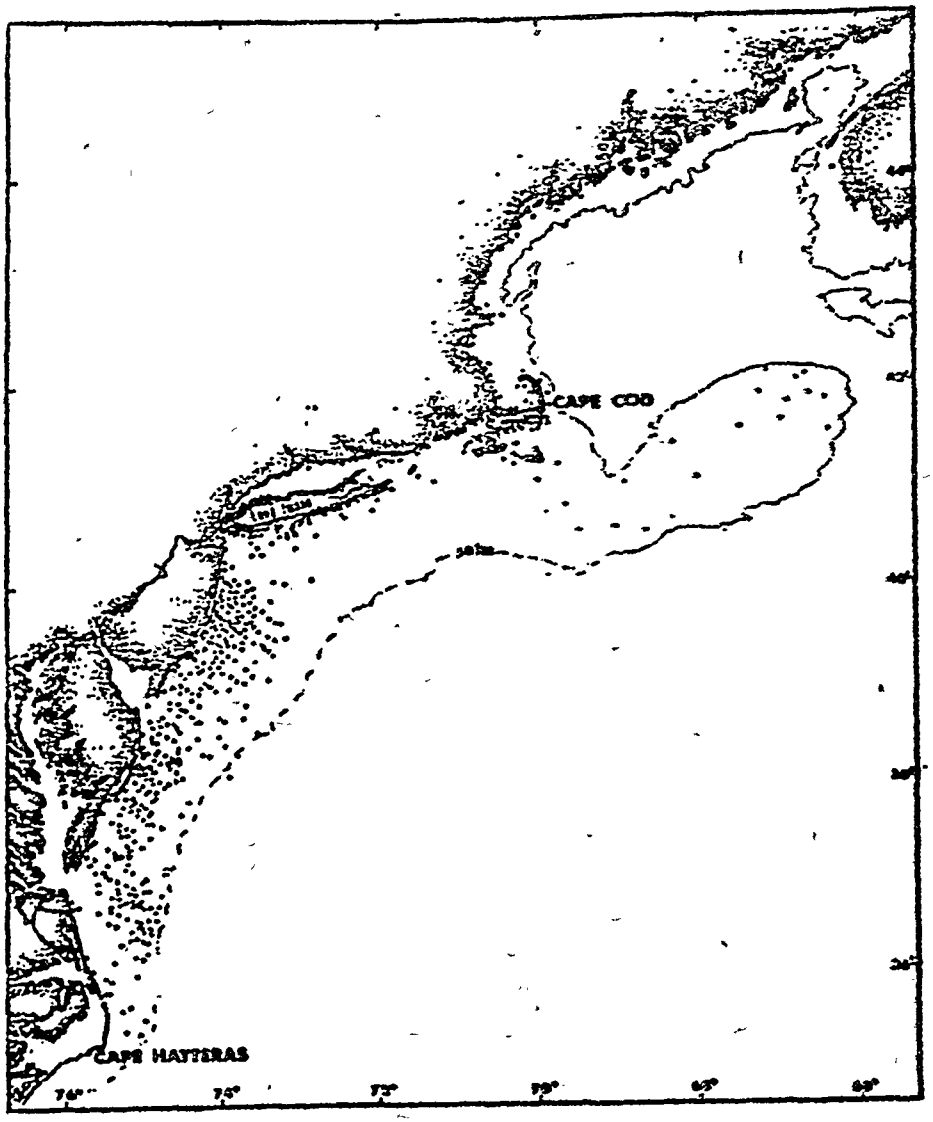
Figure 19



Distribution Of Surf Clams In The Middle Atlantic Bight And Gulf Of Maine (From Merrill And Ropes, 1969)

Figure 20

Distribution Of Median Diameters Of Total Sediment (Including Gravel Fraction) Of Surface Samples From Atlantic Continental Margin. Median Diameters Are Expressed In Phi Units - Negative Logarithm To Base 2 Of Diameter In Millimeters (From Emery And Uchupi, 1972).

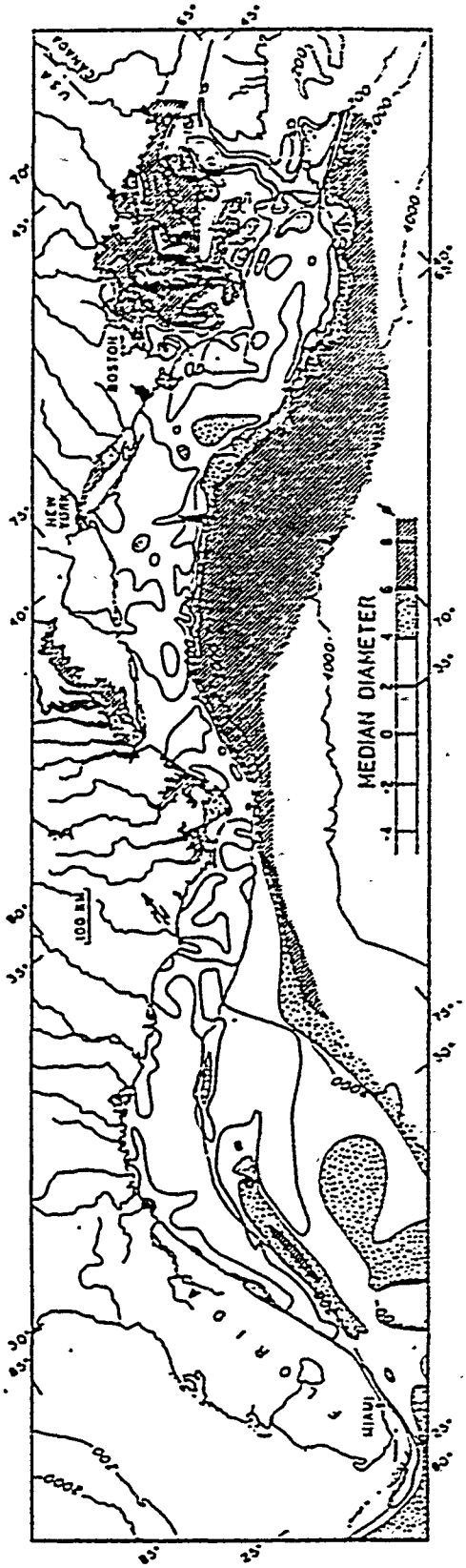
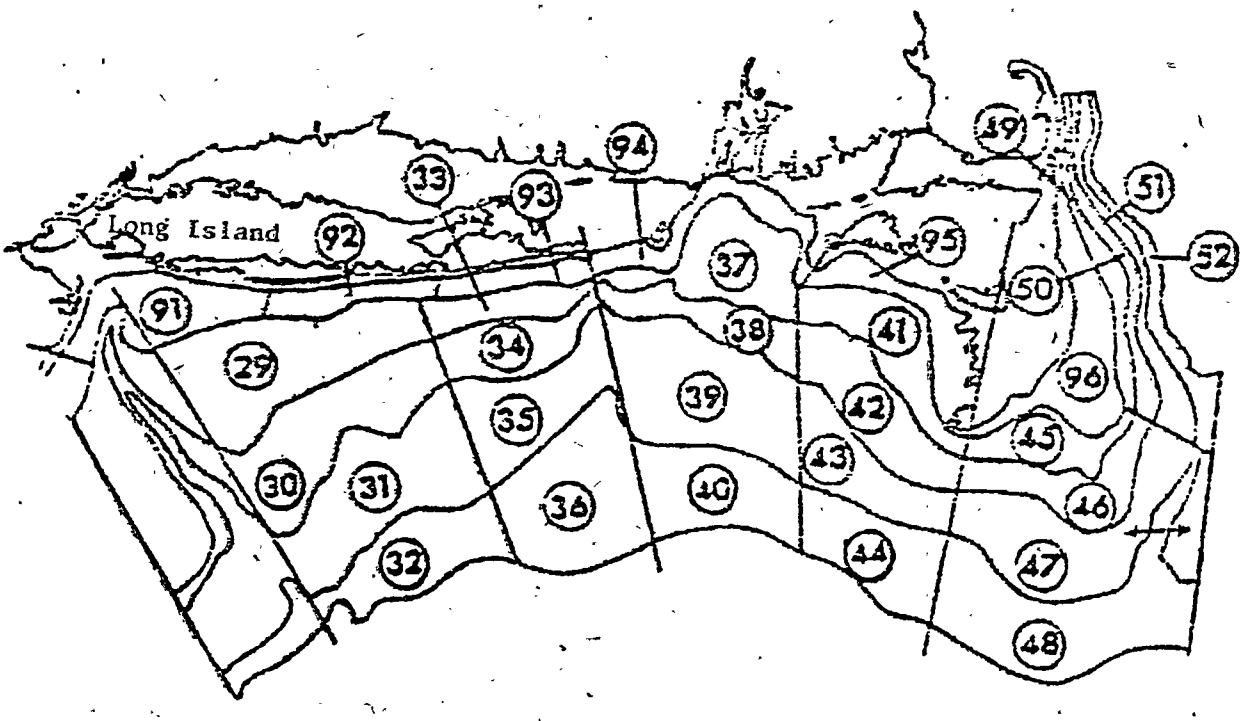


Figure 21

Ocean Shellfish Survey Strata, Hudson Canyon To Western Georges Bank



Offshore								
Strata Number	Square Miles	Depth (fms)	Strata Number	Square Miles	Depth (fms)	Strata Number	Square Miles	Depth (fms)
29	1096	15-25	37	672	15-25	45	392	15-25
30	669	25-30	38	280	25-30	46	416	25-30
31	932	30-40	39	967	30-40	47	871	30-40
32	627	40-60	40	513	40-60	48	1109	40-60
33	363	15-25	41	602	15-25	49	244	15-25
34	203	25-30	42	343	25-30	50	150	25-30
35	601	30-40	43	432	30-40	51	139	30-40
36	694	40-60	44	383	40-60	52	307	40-60
Inshore								
			91	340	5-15			
			92	191	5-15			
			93	83	5-15			
			94	229	5-15			
			95	446	5-15			
			96	495	5-15			

Figure 22

Shell Length Frequency Distributions (%) Of Surf Clams Sampled From Southern New England, New Jersey, And Delmarva Waters During January - March 1977

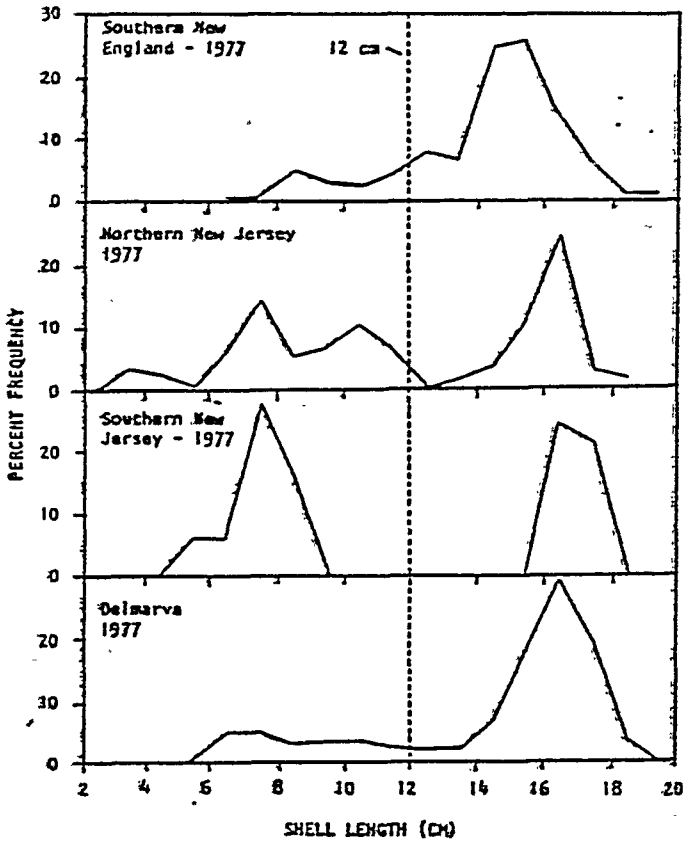
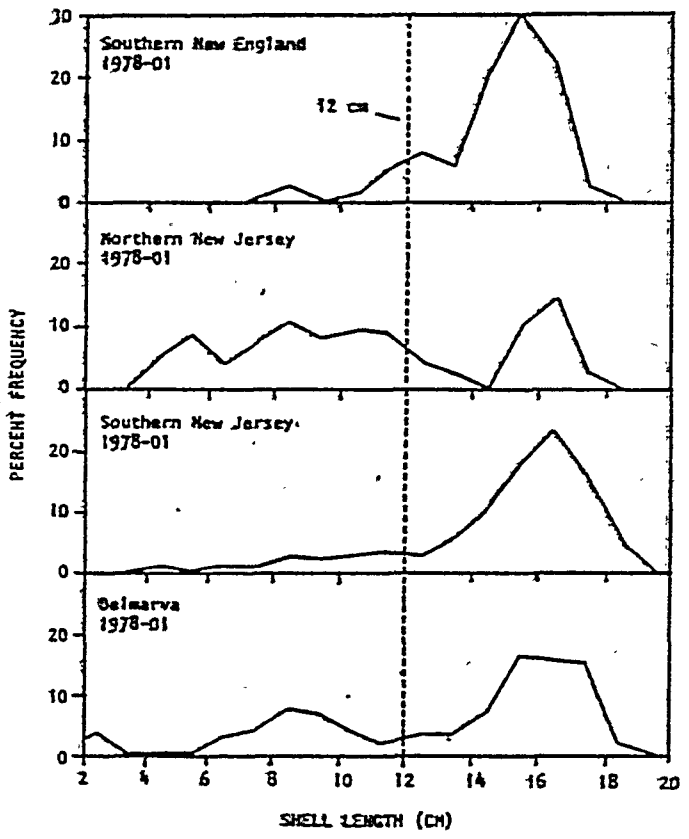


Figure 23

Shell Length Frequency Distributions (%) Of Surf Clams Sampled From Southern New England, New Jersey, And Delmarva Waters During January - February 1978



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VI. Description of Habitat

VI–1. Condition of the Habitat

No scientific information has been produced since the 1977 FMP was promulgated which would necessitate the revision or updating of this section.

VI–2. Habitat Areas of Particular Concern

No scientific information has been produced since the 1977 FMP was promulgated which would necessitate the revision or updating of this section. However, the Environmental Protection Agency has requested that no fishing be permitted between 38°20'00"N to 38°25'00"N and 74°10'00"W to 74°20'00"W because the area is a sewage disposal area and between the 38°40'00"N to 39°00'00"N and 72°00'00"W to 72°30'00"W because it is a toxic industrial waste site (W. E. Stickney, EPA, personal communication).

VI–3. Habitat Protection Programs

No special habitat protection programs exist in the habitat of the surf clam and ocean quahog species that are the subjects of this plan. Sampling for pollution is carried out by both the NMFS and the Environmental Protection Agency and within the territorial sea by various state agencies. Habitat protection programs are administered by a variety of Federal agencies including the Bureau of Land Management of the Interior Department, the Coast Guard, and the Environmental Protection Agency. The States in the region with approved Coastal Zone Management Programs are Maine, Massachusetts, Rhode Island, part of New Jersey, Maryland, and North Carolina.

Studies on the effects of ocean dumping are recommended in Section XVI.

VII. Fishery Management Jurisdiction, Laws, and Policies

VII–1. Management Institutions

The U.S. Department of Commerce, acting through the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, pursuant to the FCMA, has authority to manage the stocks.

VII–2. Treaties and International Agreements

No treaties of international agreements exist relative to surf clam or ocean quahog.

VII–3. Federal Laws, Regulations, and Policies

The only known Federal law that regulates the management of the surf clam and ocean quahog fisheries is the FCMA. The Water Pollution Control Act, as amended, is important in maintaining the habitat of surf clam and ocean quahog. Federal law provides for financial assistance for commercial fisheries. Part 251, Title 50, Code of Federal Regulations, sets forth this program as operated by the NMFS. On July 12, 1977, the NMFS issued a final rulemaking establishing conditional fisheries status in the surf clam fishery. This means that financial assistance in that fishery will be limited to that which does not significantly increase harvesting capacity. No Indian treaty rights are known to exist relative to this fishery.

VII–4. State Laws, Regulations, and Policies

The State of New Jersey has managed its surf clam resources within its territorial sea since 1975. These regulations, as modified in 1976, are discussed in Section VIII–2, and a copy of these regulations appears in Appendix II of this amended FMP.

The State of New York has many regulations governing the harvest and disposition of clams in general from its territorial sea, and the New York State Department of Environmental Conservation has proposed a management plan specifically for inshore surf clams. This proposal is discussed in Section VIII–2.

Several New England States have statutes that empower towns to regulate the harvest of shellfish to the limit of their territorial seas. The details of these statutes are not available at this time. None of these towns, however, has promulgated regulations which constitute "management plan" for either surf clam or ocean quahog. In addition, all states within the range of either species have various statutes or regulations governing the harvesting, disposition, etc., of shellfish in general within state waters. These regulations are principally concerned with the prohibition of taking shellfish from polluted waters and time and location limitations on fishing to help enforce these regulations.

VII–5. Local and Other Applicable Laws, Regulations and Policies

Information on the New England town laws that regulate shellfish harvesting to the limit of the territorial sea is not available at this time (see Section VII–4). No other local or other laws, regulations, or policies which specifically address the surf clam or ocean quahog fisheries are known to exist.

VIII. Description of Fishing Activities

VIII–1. History of Exploitation

Overview of the Surf Clam Industry[1]

As early as 1634 it is reported that American Indians roasted surf clams that washed ashore on Virginia beaches. Clams were also used as livestock feed and fertilizer by the early English settlers. The surf clam industry began around 1870 as a New England bait fishery which supplied the groundfish fleet.

Production between the 1870s and 1929 did not exeed 3,000 barrels of salted surf clams per year. In 1929 power boat dredging with scrape type dredges began, and from that date through 1942 landings did not exceed 2 million pounds of meats per year.

Increased demand for food during World War II led to the use of surf clam meats for human consumption. An early constraint to increasing this market was the inability of processors to remove sand from surf clam meats. The development of an effective drum washer in 1943 solved this problem.

Harvesting efficiency was improved with the development of the hydraulic jet cage dredge in 1945. Apparently, most of the surf clam industry entered the field of food processing around 1940. Hand methods of processing surf clam continued until the development of automatic shucking machines in the early 1970s. The machines supplemented hand processing and streamlined the harvesting, processing, and marketing sectors of the industry.

Surf clam harvests in the 1940s began off New York and concentrated in this area from 1945 through 1954 (Figure 20). Surf clam meat was much cheaper and more readily obtainable than hard- or soft-shelled clam meat, and surf clam had better consumer acceptance than ocean quahog meat. The major producers of prepared clam products began to utilize surf clam meat exclusively, and the major surf clam processing companies began to increase their own production of prepared clam products.

Of particular significance to the industry was the discovery of extensive and densely populated surf clam beds off the New Jersey coast around 1950 (Figure 20). A few surf clams were also landed from beds off Delaware and Maryland during 1951 to 1960, but until 1966 the New Jersey beds provided the resource base for the industry. During this period, gear modifications and improvements increased harvesting

[1] The historical overview draws on a study of the US clam industries by T. Ritchie, University of Delaware.

efficiency and thus clam yield, to a point where daily vessel quotas were imposed by processing plants whose capacities were limited.

Overview of the Ocean Quahog Industry

The ocean quahog resource is considered large, but until recent years was virtually ignored by domestic commercial fishermen. The ocean quahog industry began in Rhode Island around 1943 when the war food program attempted to develop red meat substitutes. After the war, ocean quahog meats were used as inexpensive substitutes for more expensive hard and soft shelled clam meats, but the dark color and strong flavor of the meats proved to be major deterrents to successful marketing. After the Rhode Island fishery landed 1.5 million pounds of meats in 1946, this industry declined to low levels due to increased production in the surf clam fishery.

In the early 1970s, ocean quahog landings accounted for only about 1% of the total weight and less than 1% of the total ex-vessel value, annually of all clams landed in the US. Since 1976, however, landings of ocean quahog have increased dramatically. This increase is directly related to (a) the decline of surf clam abundance, coupled with the effects of federal quota managment, (b) significantly increased price of surf clam meats, and (c) technological advances in the processing industry which have reduced marketing problems associated with the flavor and color of quahog meats. It is estimated that the 1977 commercial harvest of ocean quahog accounted for almost 20% by weight and 7.5% by ex-vessel value of all clams harvested commercially in the US.

VIII–2. Domestic Commercial and Recreational Fishing Activities

Surf Clam

Table 13 shows the weight and Table 14 the ex-vessel value of surf clam landings by state from 1950–1978. In most cases, these data were originally collected as bushels of clams landed and were converted to pounds of meats based on a factor of 17 pounds per bushel. Surf clam landings in New England have traditionally been converted to pounds of meats using a factor of 11 pounds/bushel. (The larger factor approximates the weight of the complete shucked meats; the smaller factor approximates the meat weight per bushel which is used by the processing plants.) In Table 13, therefore, New England surf clam landings are given in 17 pounds per bushel form, in order to facilitate comparisons with the Mid-Atlantic fishery.

Some gross trends in the fishery evident from Tables 13, 14, and 16, and Figures 24, 26, and 27 are the growth of the fishery in the New York Bight (New York and New Jersey landings), the shift in effort to beds off Virginia, the decline in New Jersey landings in recent years, and the steep increase in value of surf clam since 1976.

The surf clam fleet has usually concentrated its efforts in one area until the catch rate began to decline, and then has moved to more productive grounds. The decreasing abundance of surf clam off New Jersey and the discovery of large beds off Virginia resulted in a shift of effort to the latter area in the early 1970s. The introduction of mechanical shucking devices around 1970, which greatly increased the capacity of processing plants, coupled with the expansion of the fishing grounds, resulted in ever-increasing surf clam landings beginning around 1970. A peak catch of over 96 million pounds of meats (roughly, 5,647,060 bushels) was recorded in 1974, about 2.5 times the weight landed only a decade earlier.

After 1974, surf clam landings began to decline rapidly, to approximately 49 million pounds in 1976, the last full year without federal management of the offshore resource and fishery. The Surf Clam and Ocean Quahog FMP was implemented by the Secretary of Commerce in November, 1977, and the slight increase in total surf clam landings that year, to about 52 million pounds, was undoubtedly due at least in part to greatly increased effort by the industry (aggravated by the significant increase in the number of vessels which entered the fishery that year) in anticipation of the stringent quota management and the vessel moratorium imposed by the FMP.

The Surf Clam and Ocean Quahog FMP stipulated an optimum yield of 1.8 million bushels (about 30 million pounds of meats) for calendar year 1978 in the fishery conservation zone. Actual reported landings in 1978 totalled about 39.5 million pounds (preliminary estimate). The difference between actual landings and the quota is attributable to surf clam landings in the territorial sea (i.e., 4+ million pounds from inshore New Jersey waters, 2.4 million pounds from inshore New York waters, and about 800,000 pounds from inshore New England waters) and inadvertent overruns of the quota in the FCZ fishery.

Surf clam (and ocean quahog) landings data presented in this FMP do not include, to any reliable extent, catches by gear other than dredges. As discussed below, those states which have significant surf clam beds within their territorial seas have relatively small but traditional hand gear (i.e., tongs, rakes, etc.) fisheries for surf clam. Such fisheries exist mainly in New York and New England. It is possible that almost all of this catch is used for bait, although documentation of the magnitude and disposition of these catches is largely nonexistent. It is highly probable, however, that the landings by these local fisheries are negligible in comparison with those by the dredge fleet.

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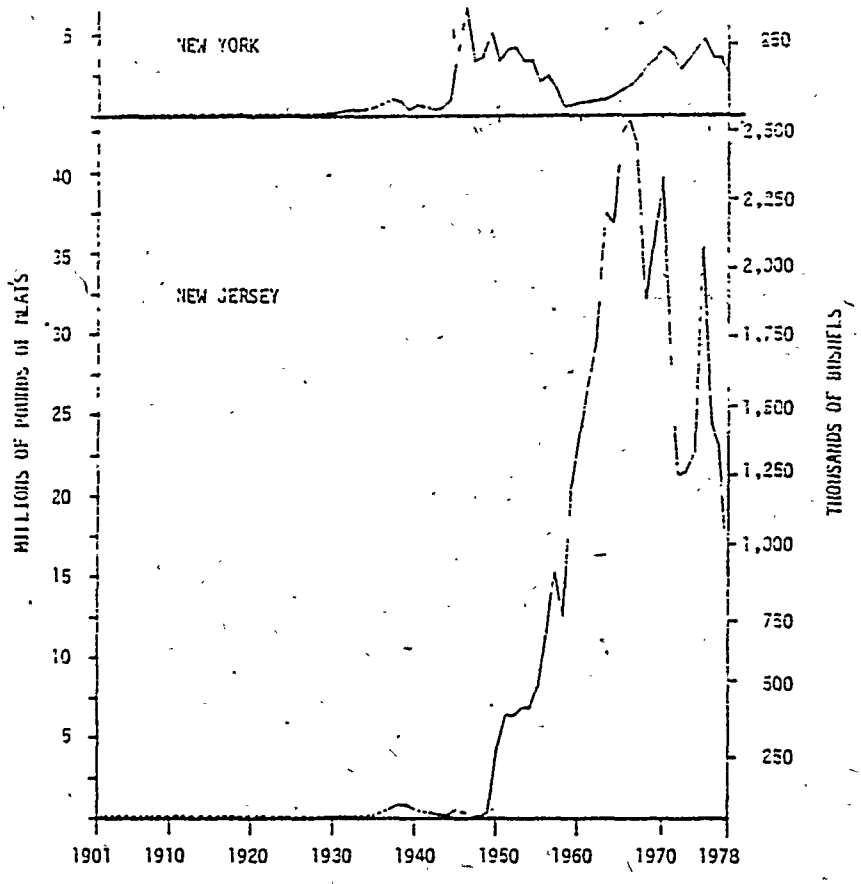

Reported Surf Clam Landings In New York And New Jersey, 1901-1978
(Dashed Lines Indicate Missing Data Years)
(From McHugh and Williams, 1976, and NMFS statistics)

Figure 2.4

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Table 13.—*Surf Clam Landings by State*

[Thousands of Pounds of Meat]

Year	New York	New Jersey	Delaware	Maryland	Virginia	New England	Total
1950	3286	4298	----	130	----	43	7757
1951	4046	6420	----	1532	----	34	12032
1952	4138	7418	----	1089	----	5	12650
1953	3345	6578	----	2454	----	----	12377
1954	3360	6877	----	1346	----	359	11942
1955	2026	8278	----	1695	----	36	12035
1956	2368	11583	2	1850	----	190	15993
1957	~1599	15224	192	934	----	6	17955
1958	429	12462	780	792	----	2	14665
1959	514	20164	1705	850	----	3	23236
1960	722	23448	478	420	----	5	25073
1961	722	26697	----	71	----	19	27509
1962	840	29830	99	75	----	15	30859
1963	974	37548	----	64	----	----	38586
1964	1218	36875	----	38	----	20	38151
1965	1505	42307	----	275	----	1	44088
1966	1840	43174	----	64	----	55	45133
1967	2305	41589	----	1149	----	25	45068
1968	3008	32181	----	5328	17	28	40562
1969	3431	36039	2757	7127	206	20	49582
1970	4182	39669	8734	10681	889	253	67406
1971	3688	28721	7694	7752	4507	268	52630
1972	2713	21332	8551	7330	23384	249	63559
1973	3319	21588	6630	7448	43323	96	82404
1974	3951	22657	5817	5426	58219	63	96133
1975	4580	35550	2315	5351	39068	110	86994
1976	3455	24378	----	7135	14054	165	49217
1977	3425	23130	----	8393	15791	1055	51794
1978*	2399	15133	----	8367	12758	812	39469

Source: Fishery Statistics of the United States and unpublished NMFS Data.
*Preliminary.
Includes Any Unallocated Catches.
Note.—FMP in effect during 1978.

Table 14.—*Ex-Vessel Value of Surf Clam Landings*

[Thousands of Dollars]

Year	New York	New Jersey	Delaware	Maryland	Virginia	New England	Total#
1950	331	416	----	11	----	8	766
1951	422	622	----	138	----	6	1188
1952	431	802	----	174	----	1	1408
1953	418	790	----	204	----	----	1412
1954	420	844	----	168	----	26	1458
1955	253	967	----	141	----	4	1365
1956	306	1277	(1)	173	----	26	1782
1957	220	1867	18	134	----	1	2240
1958	69	1317	93	93	----	(1)	1572
1959	61	1622	170	70	----	1	1924
1960	85	1546	48	34	----	(1)	1713
1961	65	1693	----	6	----	2	1766
1962	76	1917	9	6	----	2	2010
1963	91	2580	----	5	----	----	2676
1964	109	2504	----	3	----	3	2619
1965	127	3048	----	22	----	(1)	3197
1966	148	3714	----	6	----	8	3876
1967	190	4051	----	106	----	5	4352
1968	295	3299	----	536	2	5	4137
1969	390	4278	324	894	24	3	5913
1970	490	4685	935	1475	110	35	7730
1971	438	3877	1030	981	527	38	6891
1972	313	2780	1132	1151	2528	37	7941
1973	413	2709	780	1167	4777	20	9866
1974	719	2948	770	939	6836	13	12225
1975	768	4721	362	1011	5682	26	12570
1976	1089	10819	----	3829	7545	64	23355
1977	1108	11784	----	4703	8684	455	26735
1978*	776	7503	----	4914	7384	unknown	20577

Source: Fishery Statistics of the United States, and unpublished NMFS data.
Includes any unallocated catches.
(1) Less than $500.
*Preliminary estimates.

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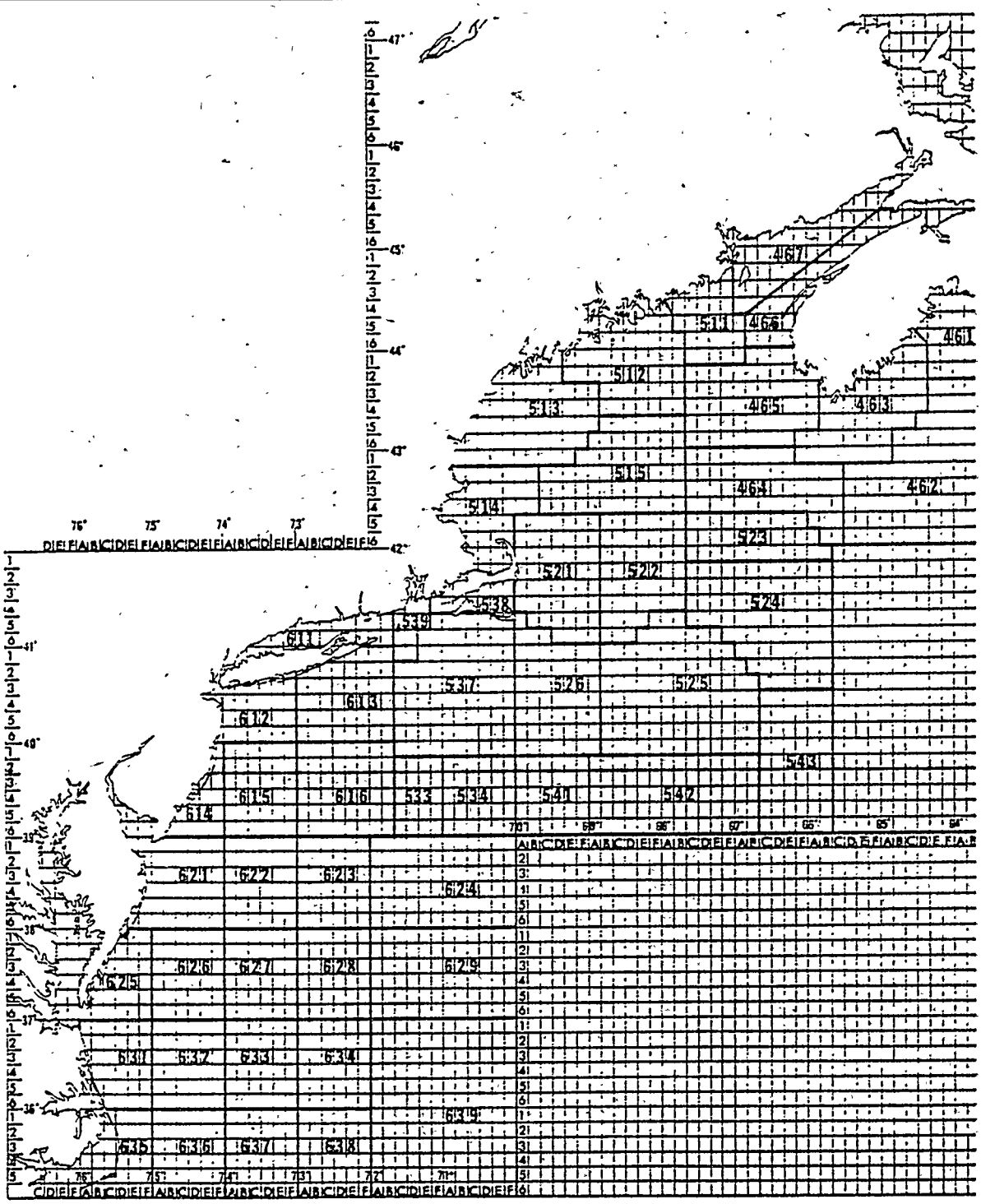

Partial Illustration Of NMFS Statistical Water Areas
For The Northwest Atlantic Ocean (See Table 15)

Figure 25

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Table 15.—*Surf Clam Catches By Water Area,[1] 1974–1977*

[Pounds of Meats]

Water Area (Name or Coded Area)	1974	1975	1976	1977
Inshore Massachusetts Waters[2]	20,700	47,000	68,057	293,035
Atlantic Ocean Off Massachusetts[3]			17,325	185,284
Inshore Rhode Island Waters[4]	20,200	24,000	21,100	189,200
Area 612	4,314,700	4,705,300	3,573,600	3,680,000
Area 614	11,930,500	32,966,900	13,376,400	7,277,000
Area 615	3,054,200	1,609,500	2,289,400	423,500
Area 621	18,552,100	8,263,100	15,728,900	23,567,100
Area 625	860,800	650,100	1,730,500	11,491,200
Area 626			293,100	3,377,400
Area 631	57,358,600	38,438,200	12,035,600	932,500
Atlantic Ocean (unspecified)			20,400	
Total	96,111,800	86,954,100	49,153,432	51,421,219

(1) See Figure 25.
(2) Includes Buzzards Bay, Cape Cod Bay, Nantucket Sound and Vineyard Sound
(3) Atlantic Ocean waters within the territorial sea in 1976, and beyond the territorial sea in 1977.
(4) Includes Block Island Sound, Long Island Sound, Sakonnet Point, and Atlantic Ocean waters within the territorial sea.
Source: NMFS Unpublished Statistics.

Table 16.—*Surf Clam Landings by State and Water Area, 1974–1977*

[Landings in Pounds of Meats]

Year	Territorial sea	Conservation zone	Total	Average $/lb.
MASSACHUSETTS				
1974	31,931		31,931	0.27
1975	72,636		72,636	0.27
1976	131,954		131,954	0.41
1977	462,145	286,348	748,493	9.46
RHODE ISLAND				
1974	31,218		31,218	0.13
1975	37,091		37,091	0.18
1976	32,764		32,764	0.20
1977	306,309		306,309	0.37
NEW YORK				
1974	3,951,200		3,951,200	0.18
1975	4,579,600		4,579,600	0.17
1976	3,454,800		3,454,800	0.32
1977	3,425,000		3,425,000	0.32
NEW JERSEY				
1974	12,165,300	10,491,500	22,656,800	0.13
1975	28,745,800	6,804,100	35,549,900	0.13
1976	3,038,800	21,338,900	24,377,700	0.44
1977	4,345,300	18,784,400	23,129,700	0.51
DELAWARE				
1974		5,817,400	5,817,400	0.13
1975	1,712,100	602,500	2,314,600	0.16
1976				
1977				
MARYLAND				
1974		5,426,100	5,426,100	0.17
1975		5,350,700	5,350,700	0.19
1976		7,134,800	7,134,800	0.54
1977		8,332,900	8,332,900	0.56
VIRGINIA				
1974	5,524,600	52,694,800	58,219,400	0.12
1975	7,575,500	31,512,800	39,088,300	0.15
1976		14,064,200	14,064,200	0.54
1977		15,791,100	15,791,100	0.55
NORTH CAROLINA				
1974				
1975				
1976		20,400	20,400	0.47
1977				

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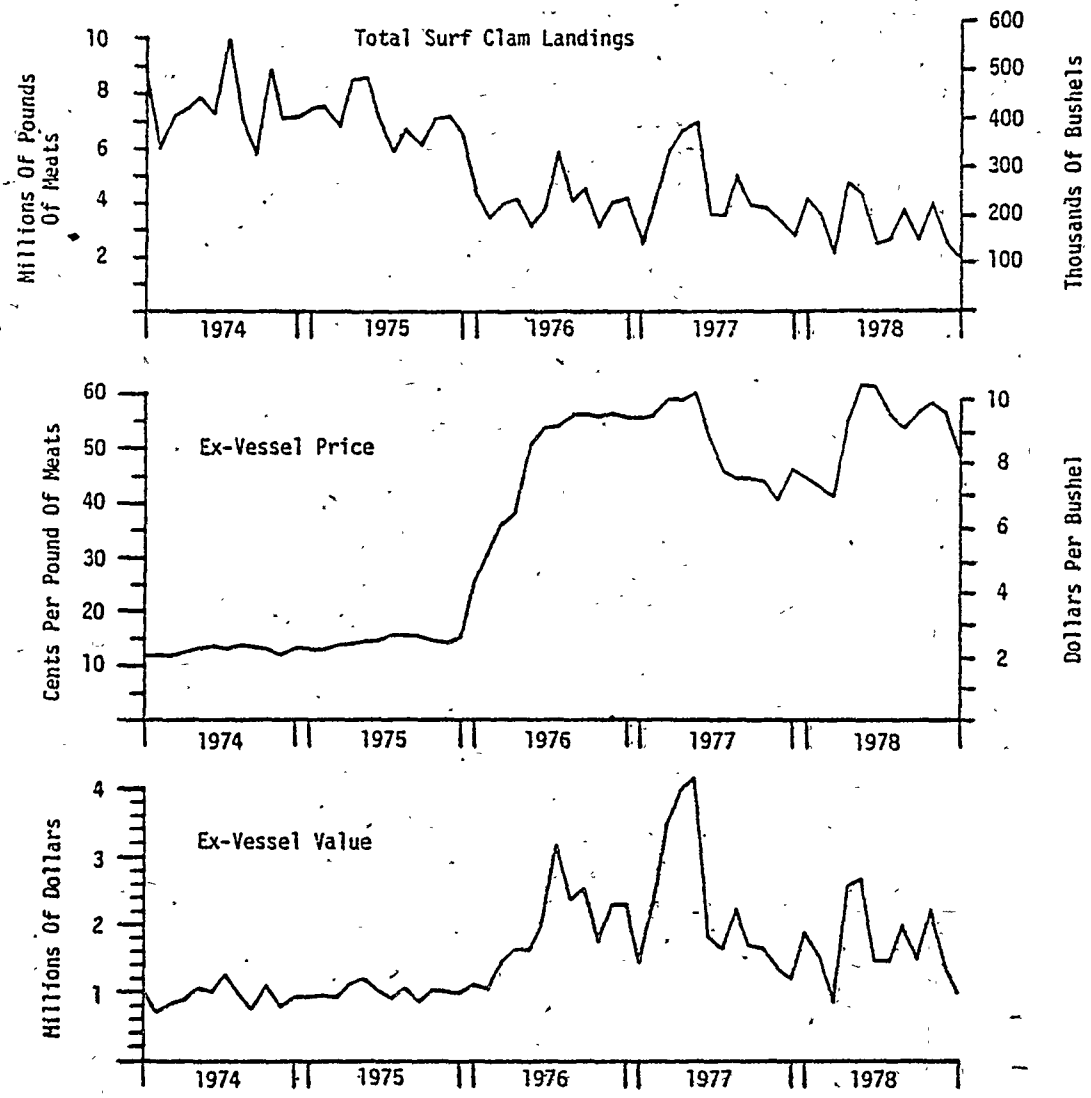

Total Landings, Average Ex-Vessel Price, And Total Ex-Vessel Value Of Surf Clam By Month, 1974-1978 (Excluding Massachusetts)

(One Bushel = 17 Pounds Of Meats)

Figure 26

Surf Clam Landings By State By Month, 1974-1978

(One Bushel = 17 Pounds Of Meats)

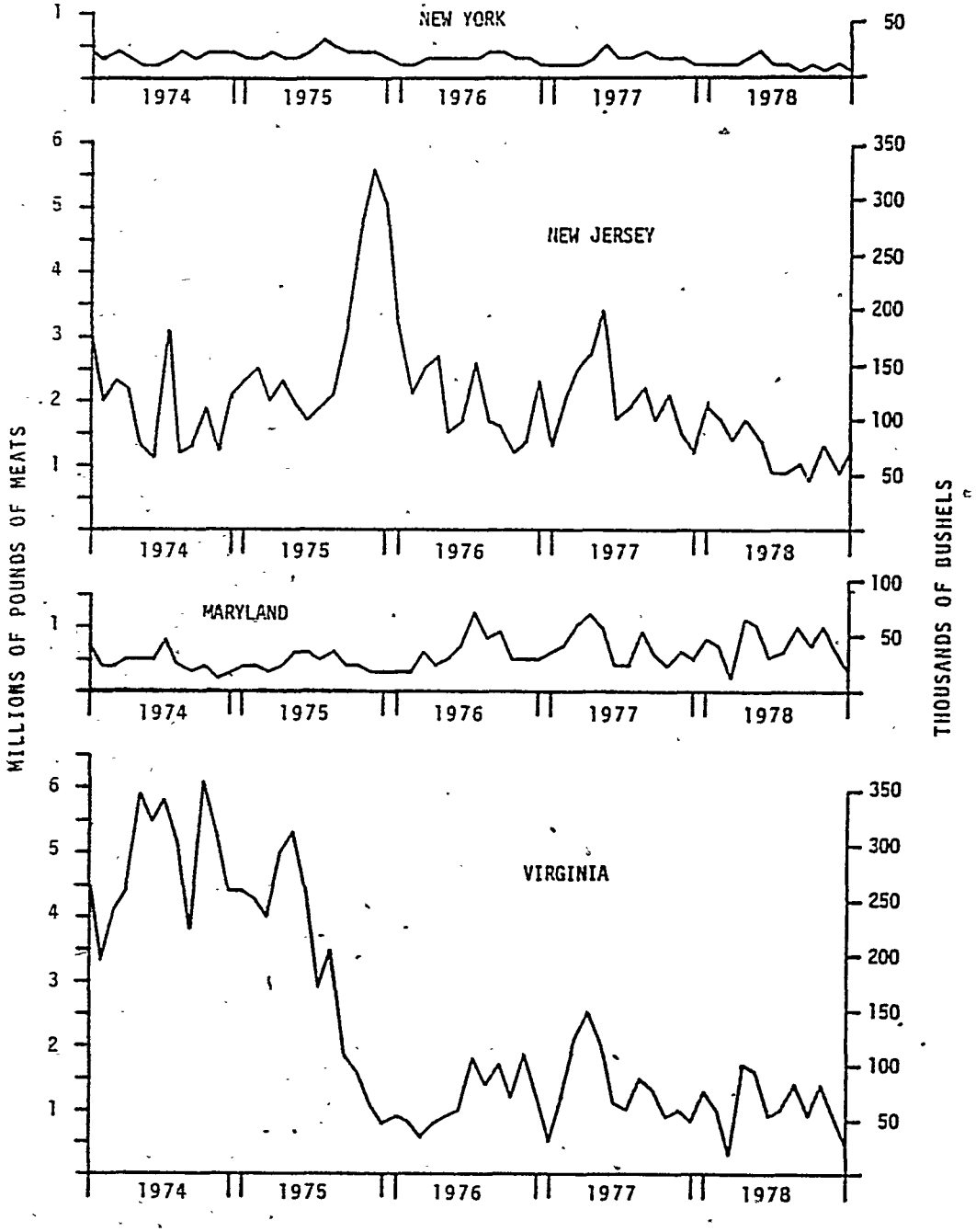

Figure 27

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Territorial Sea Surf Clam Fisheries

New York State Surf Clam Fishery

The fishery for surf clam in New York is similar in many respects to the fishery in New England. Almost all surf clams landed in New York are taken in the territorial sea and an unknown, but probably significant, fraction of the catch is used for bait.

Surf clams are landed in Kings (Brooklyn), Nassau, and Suffolk Counties, although no catch statistics are available for the Suffolk fishery. The fishery in Brooklyn harvests surf clams from uncertified (i.e., not approved for the taking of shellfish for human consumption) waters for use as bait, primarily to supply the party and charter boats in that area.

Four boats in Nassau County supply surf clams that are processed into products for human consumption. Landing statistics for this component of the State fishery are unavailable. A total of five boats in Brooklyn and Nassau are licensed by the State for the harvesting of bait clams from uncertified waters. At least several of these vessels (in the bait and food fisheries) possess federal permits for the FCZ fishery.

In 1978, 12 vessels (19 in 1977) were permitted by the New York State Department of Environmental Conservation (NYS DEC) to harvest surf clam by "mechanical means" in non-Atlantic Ocean waters (i.e., Gardiners and Peconic Bays, Long Island Sound, etc.). These are mostly small vessels (e.g., 30 to 40 feet in length) which harvest surf clam with hydraulic bucket dredges on a seasonal basis. The average blade length for this gear is probably no greater than 20 inches. Probably all of the surf clam catch takenby these vessels is sold for bait, although the DEC does not forbid the use of these clams for human food. The vessels probably are active in the surf clam fishery only during those months when demand for bait is strong. The number of vessels which participate in this fishery is probably dependent on the price and availability of surf clam relative to that for finfish. None of these vessels harvests surf clam in the FCZ, and few, if any, possess a federal permit for the FCZ fishery at present (NYS DEC, personal communication).

An unknown number of State residents harvest an unknown quantity of surf clams with hand gear (tongs) in Suffolk County. This catch is undoubtedly used entirely for bait, and most of it is sold to local bait dealers (NYS DEC, personal communication).

The New York State DEC is currently developing a management plan for its inshore surf clam (*Spisula solidissima* and *Spisula olynyma*) fishery. The proposed regulations, if adopted, will not set a territorial sea optimum yield or other quota, but specify (among other provisions) that:

(a) No person shall fail to land surf clams in the State of New York when such surf clams were harvested from shellfish lands in the marine district.

(b) No person shall use a dredge for the harvesting of surf clams in the marine district unless both the blade and the manifold of such dredge have lengths of 72 inches or less.

(c) No person engaged in the harvesting of surf clams in the marine district shall fail to maintain a complete, accurate, and up to date log.

While no controls on entry into the State fishery are proposed, provision (b) above should discourage the development of a large scale fishery in State waters. The largest dredge size currently in use in the New York territorial sea (the marine district) is 72 inches.

New Jersey Inshore Surf Clam Fishery

Figure 28 shows estimated landings of surf clam from the New Jersey territorial sea versus total New Jersey surf clam landings from 1965–1977. Over this period, about 31 percent of State surf clam landings have come from within three miles of shore. Surf clam from these inshore areas, however, have traditionally been valued less than offshore surf clam (primarily because of the smaller size and meat yield per bushel of inshore clam). From 1974–1977 (the only years for which these data are available), inshore New Jersey clam accounted for 46 percent by weight and 25 percent by ex-vessel value of the total State surf clam landings. In 1977, the average dockside prices per bushel for inshore and offshore surf clams in New Jersey were about $6.32 and $9.20, respectively.

In 1976, the State of New Jersey initiated a comprehensive management plan for its inshore surf clam fishery, the only State to do so to date. This fishery is regulated under New Jersey Administrative Code 725–12.1, under the authority of New Jersey Statutes Annotated 50:2–6.3 (Appendix II). This management program provides for separate but complementary regulation of the two components of this fishery, the bait fishery (i.e., for surf clams from waters not certified for the taking of shellfish for human consumption) and the "commercial" (i.e., food) fishery.

The most important features of the New Jersey management program for the "commercial" clam fishery (by far the biggest component of the inshore industry, although comparative landings data are unavailable) are (1) a ceiling on the number of vessels licensed to harvest surf clam, (2) a seasonal (December-April) quota of 250,000 bushels, (3) a weekly catch limitation per vessel of 500 bushels, and (4) a dredge size limitation of 60 inches. No limitation is placed on the number of vessels which may fish bait clam, nor are there seasonal or weekly catch restrictions on such harvests. Regulations which apply to both segments of the inshore industry include (1) a landings tax of $0.05 per bushel, (2) logbook reporting requirements, and (3) a yearly license fee of $5.00 per gross ton of vessel. New Jersey does not require reporting by surf clam processors.

Virtually all of the vessels licensed for the inshore New Jersey fishery possess federal permits for the FCZ surf clam fishery. Based on the number of licensed (as opposed to active) vessels, the inshore New Jersey fleet accounts for about one-third by number of all vessels licensed for the FCZ surf clam fishery. Table 18 gives physical characteristics of the inshore New Jersey fleet (compare to Table 25).

Two provisions of the New Jersey management program which may have significant economic impacts on the overall State fishery are the fishing season and the dredge size limitation. Taken together, these provisions probably favor small vessels (e.g., less than 50 tons) operators, since a small vessel (1) is less able than a large vessel to fish offshore areas during winter (bad weather) months, (2) can most likely operate a 60 inch dredge more economically than a large vessel (which should have greater fixed and variable costs and which may be forced to change dredges frequently, depending on intent to work inshore or offshore beds), and (3) is guaranteed that large vessels will not harvest the inshore

quota at a rate significantly greater than 500 bushels per week per boat. Data in Chapter IX illustrate the relative performance of the inshore New Jersey fleet in the FCZ surf clam and ocean quahog fisheries.

Table 17.—*New Jersey Inshore Surf Clam Licenses, 1974–1979*

Year	Commercial	Bait	Commercial and bait	Total
1974	44	3	0	47
1975	54	11	0	63
1976	48	19	2	67
1977	51	4	2	57
1978	60	5	3	63
1979	56	6	4	61

Table 18.—*Size Distribution of Vessels Licensed for the Inshore New Jersey Surf Clam Fishery, 1979, By Tonnage Class (Food Fishery Only)*

	Class I (0–50 GRT)	Class II (50–100 GRT)	Class III (101+ GRT)
Number	15	29	11
Percent of total	27	53	20
Average tonnage	39	78	131
Average tonnage, fleet		78	

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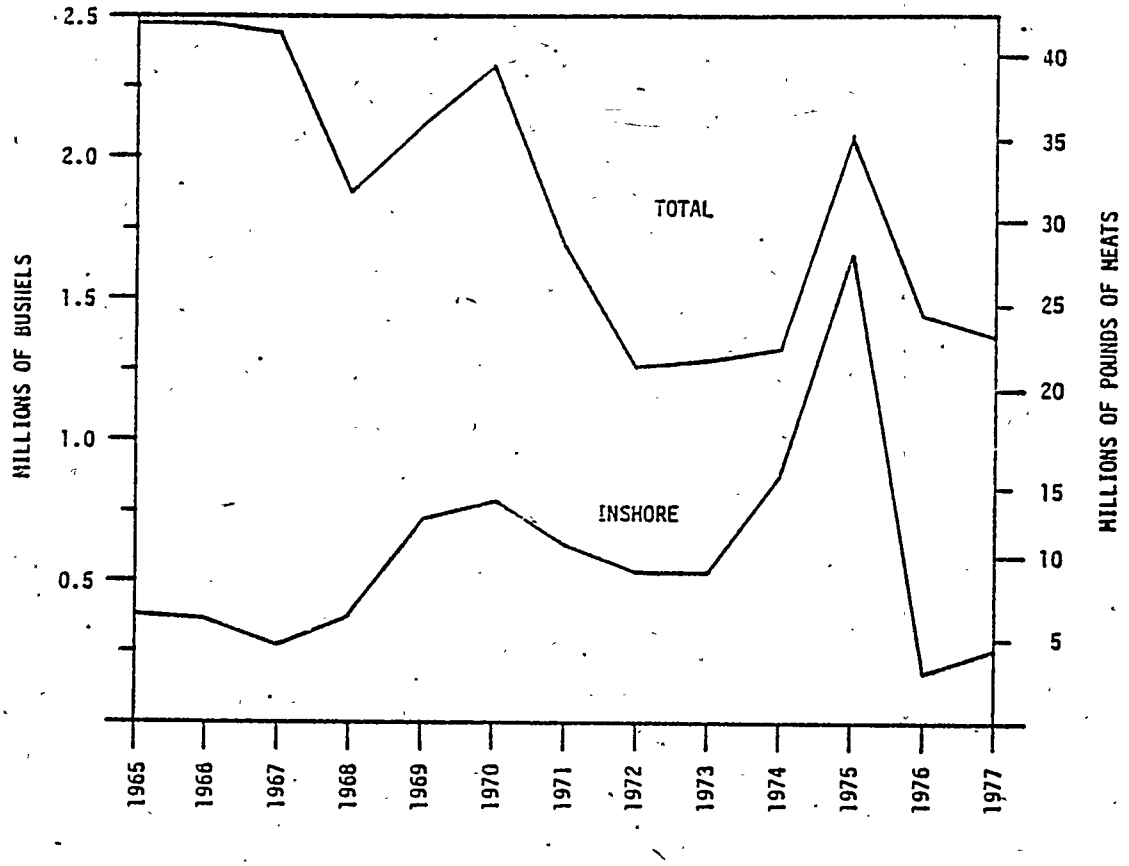
Figure 28

New Jersey Surf Clam Landings By Water Area, 1965-1977
(One Bushel = 17 Pounds Of Meats)



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New England Surf Clam Fishery

Reported landings of surf clams in New England by weight and ex-vessel value are given in Tables 13 and 14. Since 1950, reported New England landings have accounted, on average, for less than 1 percent of the total weight and ex-vessel value of total U.S. surf clam landings (varying from 0.3 percent to 3.0 percent, by weight, over that period). The New England fishery is conducted almost entirely within the territorial sea (Table 15) (as is the New England ocean quahog fishery), and, as a significant dredge fishery, exists only in Massachusetts and Rhode Island (Table 16). From 1964–1978, reported surf clam landings in Massachusetts and Rhode Island have averaged just over 100,000 pounds of meats per year in each State, although the Rhode Island fishery did not begin until 1970.

Table 19 gives the reported landings in these States by fishing gear from 1964–1974 (the latest year for which these data are available). Only surf clams taken by dredges have been reported in official fishery statistics for Rhode Island, although it is quite possible that small amounts are also taken by hand (i.e., rakes, hoes, etc.) gear. Surf clams caught by dredges and landed in Rhode Island are used almost entirely for products for human consumption.

From 1964–1974, approximately 16 percent, on average, of the reported landed weight of surf clams in Massachusetts has been taken by hand fishing gear. This figure may be an underestimate, however, since catches by such gear cannot easily be documented by NMFS port agents. It is probable that almost all of the surf clams taken with this kind of equipment is used for bait.

Surf clams are also harvested with hand fishing gear, in unknown quantities, in the other New England States, but these catches have never been recorded in official fishery statistics, and are undoubtedly negligible compared to reported New England landings. A small-scale dredge fishery for surf clams was begun in Maine in 1978, but this must, at the present time, be regarded as an experimental venture.

Landings by the New England surf clam dredge fishery have increased greatly in the last few years, and this is undoubtedly due at least in part to the significant increase in the price of surf clams over the same period, although the average ex-vessel price in New England is significantly less than in the mid-Atlantic offshore fishery. As Table 16 indicates, the average ex-vessel price per pound for New England surf clams (overall) is similar to that for inshore surf clams in New York and that paid for surf clams from inshore New Jersey beds (Section VIII–2).

As Table 13 indicates, surf clam landings in New England have fluctuated proportionately more than landings by the mid-Atlantic surf clam fishery. This is undoubtedly due at least partially to the fact that many New England fishermen are active in the surf clam fishery on a seasonal or part-time basis only. Fluctuations in New England landings may not reflect surf clam abundance or availability so much as they do availability of other species. Most of the New England vessels which harvest surf clams are small vessels (compared to the mid-Atlantic fleet), and many are inshore lobster vessels, especially in Massachusetts. It is unknown at the present time how many vessels harvest surf clam or ocean quahog in inshore New England waters, but less than 20 New England vessels currently have permits for the fishery in the FCZ (i.e., about 10 percent of all permitted vessels).

The New England surf clam resource and fishery are clearly distinct from those in the mid-Atlantic. No significant (i.e., commercially exploitable) beds of surf clams have even been found in offshore New England waters, and it is extremely unlikely that beds large enough to sustain a fishery at all comparable in magnitude to the mid-Atlantic fishery, even for a few years, exist.

Table 19.—*Reported New England Surf Clam Landings by State by Gear 1964–1977*

[Rounded to the nearest 100 pounds, 10 dollars, and 1 cent, where appropriate]

Year		Massachusetts				Rhode Island total
		Total	Dredges	Rakes	Hoes	
1964	Pounds	20,200	16,800	3,400		
	Dollars	2,780	2,480	300		
	$/Pound	0.14	0.15	0.09		
1965	Pounds	900			900	
	Dollars	150			150	
	$/Pound	0.16				
1966	Pounds	54,600	53,600		900	
	Dollars	8,030	7,880		150	
	$/Pound	0.15	0.15		0.17	
1967	Pounds	24,700	24,700			
	Dollars	4,500	4,500			
	$/Pound	0.18	0.18			
1968	Pounds	28,300	18,100		10,200	
	Dollars	5,060	2,660		2,400	
	$/Pound	0.18	0.15		0.24	
1969	Pounds	20,200	18,100	1,900	300	
	Dollars	3,150	2,660	440	50	
	$/Pound	0.16	0.15	0.23	0.17	
1970	Pounds	133,700	121,500		12,200	119,000
	Dollars	18,970	16,070		2,900	15,840
	$/Pound	0.14	0.13		0.24	0.13
1971	Pounds	28,300	15,000	3,100	10,200	239,200
	Dollars	5,420	2,270	840	2,310	32,260
	$/Pound	0.19	0.15	0.27	0.23	0.13
1972	Pounds	47,000	40,400	2,300	4,300	202,300
	Dollars	10,140	8,400	770	980	27,270
	$/Pound	0.22	0.21	0.33	0.23	0.13
1973	Pounds	69,400	48,500	1,200	19,600	25,400
	Dollars	16,690	10,650	320	5,710	3,610
	$/Pound	0.24	0.22	0.27	0.29	0.14
1974	Pounds	32,000	31,100	900		31,200
	Dollars	8,650	8,380	280		3,920
	$/Pound	0.27	0.27	0.31		0.13

Ocean Quahog

The ocean quahog fishery was traditionally a small industry operated out of Rhode Island ports. The Mid-Atlantic ocean quahog fishery began in 1976 (in New Jersey) and has grown rapidly since that date (Tables 20 and 21 and Figure 29). The development of the fishery in this area is attributable to declining surf clam abundance, advances in ocean quahog processing technology, the relatively high value of surf clam, the effects of surf clam quota management under the Surf Clam and Ocean Quahog FMP, and the excess harvesting capacity of the Mid-Atlantic surf clam fleet. The 1978 total catch of

ocean quahog, about 23 million pounds, was about 27 times greater than the catch five years earlier, and about 88% of the 1978 harvest was landed in Mid-Atlantic ports.

The New England ocean quahog fishery has been conducted almost entirely within the territorial sea, and only began to expand into offshore waters in 1977. About 88% of the 1977 New England quahog catch was taken in inshore waters. The New England fishery remains dominated by its Rhode Island component, which has been responsible for about 95%, on average, of all New England ocean quahog landings from 1973–1978.

Vessels from New Jersey dominate the Mid-Atlantic ocean quahog fishery. Ocean quahog fisheries are presently developing in Maryland and Virginia, but not in New York, which has never recorded any landings of this species. The Mid-Atlantic fishery has relied exclusively on offshore quahog beds.

The surf clam industry has created a strong market demand for prepared clam products. The supply of surf clams meat has decreased significantly in recent years, and the cost of surf clam meat has remained high (over $10.00 per bushel, ex-vessel, during some months in 1978) despite the great increase in ocean quahog landings during the same period. The average dockside price for Mid-Atlantic ocean quahog in 1978 was just under $3.00 per bushel. Processors are increasingly utilizing ocean quahog to the extent technically feasible in prepared clam products, althought it is clear from the difference in value of the two species and from information from industry members that ocean quahog is not now (and may never be) completely substitutable for surf clam. Ultimately, the development of this industray will largely depend on future advances in processing technology, and the availability and relative costs of other clam meats from the east coast surt clam fishery and other areas.

VIII–3. Foreign Fishing Activities

The surf clam and ocean quahog fisheries are domestic fisheries only.

VIII–4. Interaction Between Domestic and Foreign Participants in the Fishery

There are no records of foreign (including Canadian) catches of either species in the northwest Atlantic.

Table 20.—*Ocean Quahog Landings (Pounds of Meats) by Distance from Shore (water area)*

	1977	1976	1975	1974
Landings 0–3 mi. (pounds)	2,509,000	1,497,400	1,296,700	836,300
Ex-vessel value, 0–3 miles	$711,338	$378,977	$248,385	$145,933
Landings FCZ (pounds)	15,893,590	4,103,700		
Ex-vessel value, FCZ	$4,860,219	$1,237,894		

Table 21.—*Volume, Ex-Vessel Value, and Average Ex-Vessel Price per Pound[1] of Reported Ocean Quahog Landings, by Region, 1973–1978*

[Thousands of Dollars and Thousands of Pounds of Meats]

	1973	1974	1975	1976	1977	[2]1978
New England [3]						
Quantity	1457.0	838.3	1296.7	1501.5	3015.7	2832.5
Value	250.0	146.0	248.4	379.8	857.8	817.9
Dollar/Pound	0.17	0.17	0.19	0.28	0.25	0.29
Mid Atlantic [4]						
Quantity				4099.6	15745.3	19987.4
Value				1237.0	4729.2	5845.4
Dollar/Pound				0.30	0.30	0.29
Total						
Quantity	1457.0	838.3	1296.7	5601.1	18761.0	22819.9
Value	250.0	146.0	248.4	1616.9	5587.0	6663.2
Dollar/Pound	0.17	0.17	0.19	0.29	0.30	0.29

[1] To obtain the average ex-vessel price per bushel, multiply the average price per pound by 10.
[2] Preliminary data.
[3] Maine through Connecticut.
[4] New York through Virginia.

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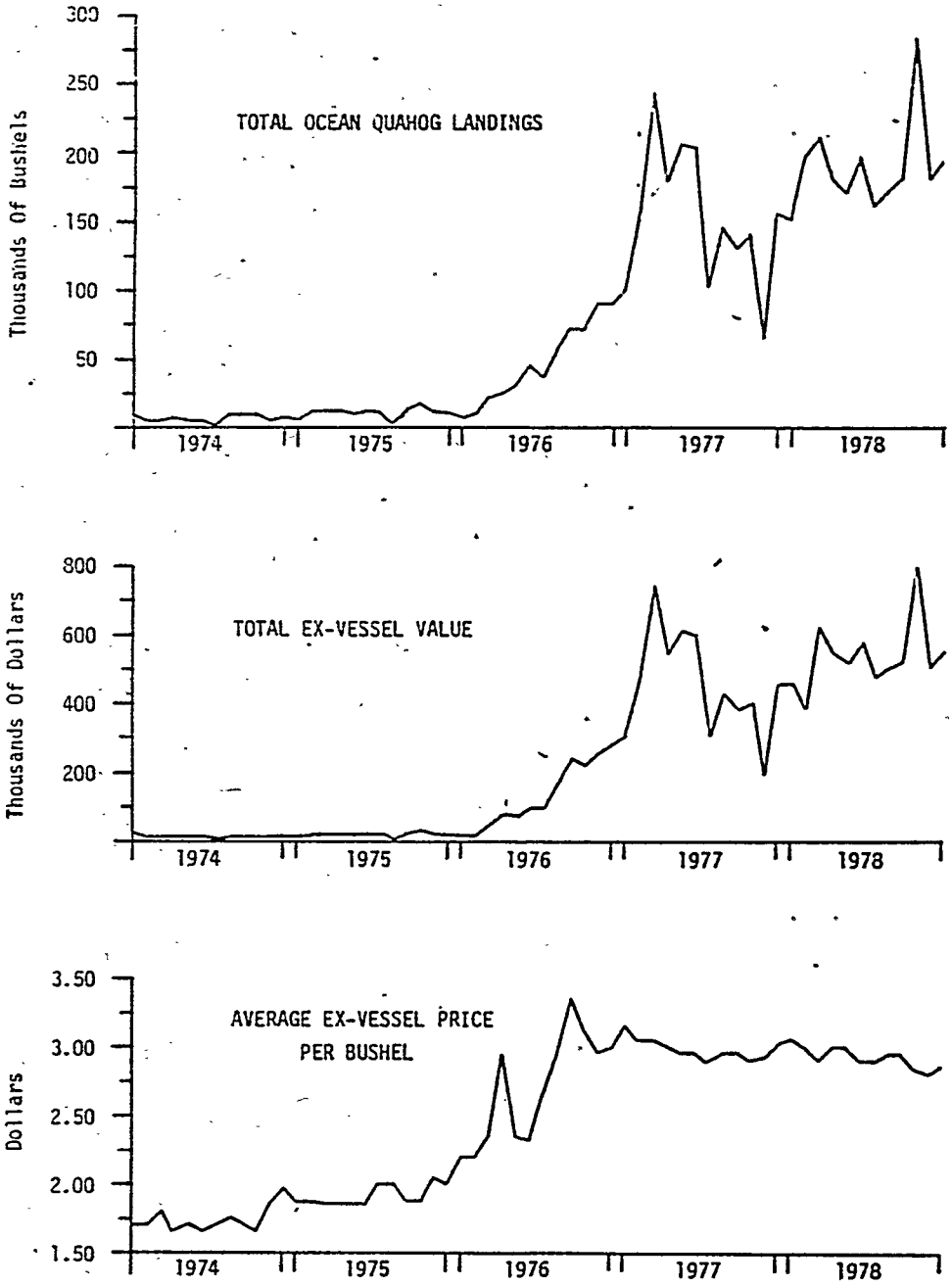
Figure 29



Total Landings, Total Ex-Vessel Value, And Average Ex-Vessel Price Of Ocean Quahog By Month, 1974-1978 (Excluding Massachusetts) (One Bushel = 10 Pounds Of Meats)

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IX. Description of Economic Characteristics of the Fishery

IX–1. Domestic Harvesting Sector

Relative Significance of Surf Clam to US Industry

In terms of total weight of clam meats landed annually, the surf clam is the most significant commercial clam industry in the US. Surf clam has accounted for 69% of all commercially caught clam meats in the US, and 25% of the ex-vessel value of clams during the past 10 years.

Relative Importance of the Surf Clam Harvest in the Principal States

Table 22.—*Contribution of Surf Clam Landings to State Fisheries by Percentage of Total Ex-Vessel Values, 1965–1977*

[Millions of Dollars]

Year	New Jersey		Maryland		Virginia	
	Total ex-vessel value	Percentage from surf clam landings	Total ex-vessel value	Percentage from surf clam landings	Total ex-vessel value	Percentage from surf clam landings
1965	12	25	13	(*)	27	
1966	10	37	14	(*)	21	
1967	11	37	17	(*)	18	
1968	10	33	16	3	21	(*)
1969	11	39	18	5	18	(*)
1970	13	36	19	8	22	(*)
1971	12	33	20	5	22	2
1972	14	20	19	6	27	9
1973	18	15	21	6	41	12
1974	17	17	22	5	36	17
1975	20	24	23	4	33	17
1976	35	30	31	2	43	16
1977	38	31	Unknown	Unknown	Unknown	Unknown

*=Less than 1 percent.
Source: Fisheries Statistics of the United States, and unpublished NMFS data.

Table 23.—*1977 Surf Clam Landings by County (Quantity in Thousands of Pounds, Value in Thousands of Dollars)*

	State and County	Surf Clam		Total		Cumulative share of total landings
		Quantity	Value	Quantity	Value	
NJ	Cape May	16,497.3	8,996.2	49,561.1	21,155.4	
		32.08%	33.65%	33.29%	42.52%	32.08%
VA	Northampton	8,637.5	4,848.6	14,803.6	6,742.9	
		16.80%	18.14%	58.35%	71.91%	48.88%
MD	Worcester	8,392.9	4,702.7	12,422.0	6,482.2	
		16.32%	17.59%	67.56%	72.55%	65.20%
VA	Accomack	7,153.6	3,835.6	17,674.3	6,950.9	
		13.91%	14.35%	40.47%	55.18%	79.11%
NJ	Atlantic	4,657.6	1,954.9	7,116.1	3,588.2	
		9.06%	7.31%	65.45%	54.48%	88.17%
NY	Nassau	3,275.1	1,059.6	4,549.5	2,490.0	
		6.37%	3.96%	71.99%	42.55%	94.54%
NJ	Ocean	1,786.2	792.6	17,742.1	7,295.1	
		3.47%	2.96%	10.07%	10.86%	98.01%
MA	Bristol	253.0	184.0	NA	NA	
		0.49%	0.69%	NA	NA	98.50%
MA	Barnstable	218.3	150.0	NA	NA	
		0.42%	0.56%	NA	NA	98.92%
RI	Washington	197.2	112.2	46,845.3	9,067.1	
		0.38%	0.42%	0.42%	1.24%	99.30%
NJ	Monmouth	188.6	40.8	102,349.9	4,859.3	
		0.37%	0.15%	0.18%	0.84%	99.67%
NY	Kings	149.9	48.5	1,690.9	525.6	
		0.29	0.18%	8.87%	9.22%	99.96%
MA	Dukes	13.0	8.9	NA	NA	
		0.03%	0.03%	NA	NA	99.99%
RI	Newport	1.0	.4	23,610.5	11,244.5	
		<0.01%	<0.01%	<0.01%	<0.01%	99.99%
	Total	51,421.2	26,734.7			100.00%

<=Less than.
NA=Data not available.

Table 22 presents a summary of the ex-vessel value of surf clam landings for three principal surf clam landing states; New Jersey, Maryland and Virginia. Surf clam landings have constituted a very significant percentage of the total value of all landings in these states.

Table 23 presents surf clam landings for 1977 by county. From the data in the table the concentration of the harvesting sector is obvious. Five counties accounted for almost 90 percent of all surf clam landings. Cape May County, New Jersey, alone accounted for 32.08 percent of all surf clam landings and for that County, surf clam accounted for 33.29 percent of all landings in quantity and 42.52 percent of all landings in value.

Ocean quahog landings by county are presented in Table 24. This fishery is even more concentrated than the surf clam fishery, with four counties accounting for 90.15% of all landings. Cape May County, New Jersey was again first in quantity and value of landings in 1977. Except for Washington County, Rhode Island, and the counties that ranked high in ocean quahog landings were similar to those that ranked high in surf clam landings.

Vessel Data

The number of vessels in the surf clam fishery gradually increased from 68 in 1965 to 104 in 1970. The number of vessels then declined slightly from 1970 to 1975. The fleet has increased to a 1978 total of 157 active vessels, that is, vessels that filed logbook reports indicating surf clams has been landed.

The vessels in the surf clam fleet vary tremendously with respect to their physical characteristics. In 1978 the tonnage per vessel ranged from 1 to 306 tons, with an average of 110 tons. Vessel length ranged from 18 to 146 feet, with an average of 81 feet. The horsepower of the surf clam vessels ranged from 70 to 1750, with an average of 428. Crew size ranged from 2 to 7 men, with an average of 3 men. The size of the dredge ranged from 22 to 240 inches with an average length of 88 inches. These data are summarized in Table 25. Table 26 contains data on the size distribution of these vessels.

Table 24.—*1977 Ocean Quahog Landings by County (Quantity in Thousands of Pounds, Value in Thousands of Dollars)*

State and County	Ocean quahog		Total		Cumulative share of total landings
	Quantity	Value	Quantity	Value	
NJ Cape May	12,615.0	3,784.3	49,561.1	21,155.4	
	67.43%	68.10%	25.45%	17.94%	67.43%
RI Washington	2,714.4	767.1	46,845.3	9,067.1	
	14.51%	13.77%	5.79%	8.46%	81.94%
NJ Atlantic	876.0	264.7	7,116.1	3,588.2	
	4.68%	4.75%	12.31%	7.38%	86.62%
MD Worcester	660.5	196.2	12,422.0	6,482.2	
	3.53%	3.52%	5.32%	3.03%	90.15%
VA Northampton	658.1	197.5	14,803.6	6,742.9	
	3.52%	3.54%	4.45%	2.93%	93.67%
NJ Ocean	625.5	184.4	17,742.1	7,295.1	
	3.34%	3.31%	3.53%	0.25%	97.01%
VA Accomack	310.2	92.0	17,674.3	6,950.9	
	1.66%	1.65%	1.76%	1.32%	98.67%
MA Barnstable	114.2	33.0	NA	NA	
	0.61%	0.59%	NA	NA	99.28%
RI Bristol	79.2	25.4	515.3	594.7	
	0.42%	0.46%	15.37%	4.27%	99.70%
MA Bristol	50.8	15.2	NA	NA	
	0.27%	0.27%	NA	NA	99.97%
RI Newport	5.1	1.5	23,610.5	11,244.5	
	0.03%	0.03%	0.02%	0.01%	100.00%
MA Dukes	.6	.2	NA	NA	
	<0.01%	<0.01%	NA	NA	
Total	18,709.6	5,571.6			100.00%

<=Less than.
NA=Data not available.

Table 25.—*Physical Characteristics of Surf Clam Vessels, 1978*

	Length (feet)	Gross tonnage	Dredge blade (inches)	Horse-power	Crew size
Minimum	18	1	22	70	2
Maximum	146	306	*240	1750	7
Average	83	110	**88	428	3

*Represents double 120" dredges; largest single dredge was 200".
**The most commonly used dredge size was 60".

Table 26.—*Estimated Vessel Distribution by Tonnage Class in the Surf Clam Fishery, 1965–1977*

Year	Total vessels	Class 1 (0–50 tons)	Class 2 (51–100 tons)	Class 3 (101+ tons)
1965	68	33	33	2
1966	74	34	34	6
1967	91	40	40	11
1968	86	38	42	6
1969	92	32	56	4
1970	104	33	59	12
1971	92	28	46	18
1972	90	29	44	17
1973	93	32	44	17
1974	98	35	46	17
1975	99	35	46	18
1976	122	33	55	34
1977[1]	155	22	56	77
1978[2]	157	21	58	78

[1]Licenses issued as of December 31, 1977.
[2]Vessels active in the fleet as of December 31, 1978, based on logbook reports.

Vessel Performance—1978

This section contains information on the performance of the vessels in the surf clam and ocean quahog harvesting sector during 1978, the first full year of the plan. The data summarized in this section were collected through the mandatory vessel log book system.

Table 27 contains information on overall industry performance during 1978. The data cover the harvesting activities of 153 of the 157 active vessels (there were incomplete records for 4 vessels). Since some of the vessels are actively engaged in the inshore New Jersey surf clam fishery (which does not fall under the purview of this plan) in addition to the offshore fisheries, in order to properly evaluate the overall performance of the industry these inshore activities must be included. In 1978, total ex-vessel revenues generated at the harvesting sector level were about $25 million, of which 71%, 6%, and 23% were from FCZ surf clam, inshore New Jersey surf clam, and FCZ ocean quahogs respectively.

Table 27.—*1978 Industry Performance Summaries*

	Offshore Clams (FCZ)	Inshore Clams (N.J.)	Ocean Quahogs (FCZ)
Total Landings (bushels)	1,779,287	248,038	1,930,900
Average Price/Bushel	$9.96	$6.00	$3.00
Total Revenues	$17,721,706	$1,488,230	$5,792,701
Grand Total		$25,002,637	
% By Species	71%	6%	23%

Table 28 contains information on the distribution of these revenues among the 153 vessels in the fleet. These vessels were divided into three different groups, depending on the gross registered tonnage (GRT) of the vessels. These were the three vessel classes utilized in the Plan for analyses. Class 1 vessels are less than 50 GRT, Class 2 vessels are between 51 to 100 GRT, and Class 3 vessels are greater than 100 GRT. Of the 153 vessels examined here, there were 21 Class 1 vessels (13% of total), 56 Class 2 vessels (37%), and 76 Class 3 vessels (50%). Class 3 vessel harvesting activities generated 66% of the total industry revenues, Class 2 vessels generated 29% of the total industry revenues, and Class 1 generated about 5% of the total revenues. On a species basis, Class 3 vessels generated about 66% of the FCZ clam revenues, 17% of the inshore clam revenues and 79% of the quahog revenues. Class 2 vessels accounted for 28% of the FCZ clam revenue, 61% of the inshore clam revenues, and 21% of the quahog revenues. Class 1 vessels accounted for 5% of the FCZ surf clam revenue, 22% of the inshore clam revenues, and 0% of the quahog revenues.

Table 28.—*Distribution of Revenues by Vessel Class*

	Class 1 (0–50 GRT)	Class 2 (51–100 GRT)	Class 3 (100+ GRT)
# of Active Vessels	21	56	76
% of Total Vessels	13%	37%	50%
% of Total Revenues	5%	29%	66%
% of FCZ Clam Revenues	5%	28%	66%
% of Inshore Clam Revenues	22%	61%	17%
% of Quahog Revenues	0%	21%	79%

Figure 30 shows the average catch of surf clam frm the FCZ per trip by vessel class for 1978.

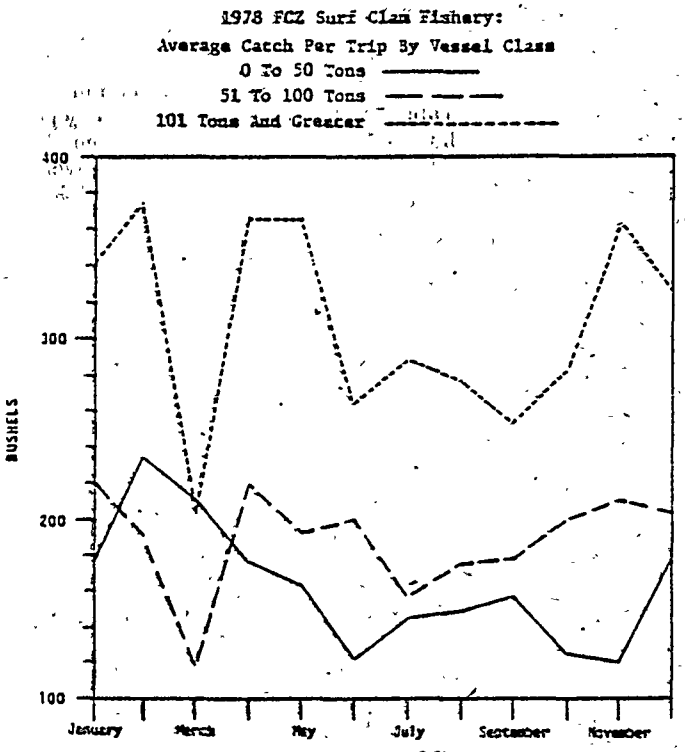

Figure 30

Table 29.—*Concentration of FCZ Surf Clam Catch*

Percent surf clam catch	Number of vessels	Number of vessels (cumulative)	Percent of total vessels landing FCZ clam	Percent of quahogs (cumulative)	Percent of inshore clams (cumulative)
10	4	4	3	0	0
20	4	8	5	8	0
30	6	14	9	11	0
40	7	21	14	14	0
50	9	30	20	18	0
60	9	39	26	21	3
70	11	50	33	22	3
80	15	65	43	23	6
90	22	87	57	32	26
100	65	152	100	98	99

Table 30.—*Concentration of Quahog Catch*

Percent of quahog catch	Number of vessels	Number of vessels (cumulative)	Number of total vessels landing quahog	Percent of FCZ clams (cumulative)	Percent of inshore clams (cumulative)
10	1	1	2	0	0
20	1	2	4	2.5	0
30	4	4	8	3.0	0
40	2	6	12	3.0	0
50	2	8	16	3.5	0
60	2	10	20	4.5	0
70	3	13	26	6.0	0
80	3	16	32	6.0	0
90	5	21	42	11.5	4
100	30	51	100	28.0	55

Table 31.—*Concentration of Inshore Clams*

Percent of inshore clam catch	Number of vessels	Number of vessels (cumulative)	Percent of total vessels landing inshore clam	Percent of FCZ clams (cumulative)	Percent of FCZ quahogs (cumulative)
10	2	2	4	0.5	0
20	5	5	11	1.0	1
30	3	8	17	2.0	2
40	4	12	26	3.0	4
50	4	16	34	4.0	5
60	4	20	46	5.0	5
70	4	24	51	5.5	6
80	5	29	62	6.5	8
90	5	34	72	8.0	11
100	13	47	100	12.0	12

Tables 29, 30 and 31 contain information on the concentration of the catch among the vessels in the fleet, irrespective of tonnage size. Not all of the vessels were engaged in harvesting all of the species. Specifically, in 1978, 152 of the 153 vessels recorded at least a bushel of FCZ clams, but only 51 vessels were active in the quahog fishery, and only 47 vessels were active (due to entry restrictions) in the inshore New Jersey clam fishery.

One fact that is clearly illustrated in these tables is that of fleet specialization. For example, in Table 29 it can be seen that 50 vessels (33% of the total harvesting any FCZ clams) harvested 70% of the surf clams but these same vessels accounted for only 22% of the quahog revenues and 3% of the inshore clam revenues. In Table 30, it can be seen that 21 vessels accounted for 90% of the total quahog revenues but only 11.5% of the FCZ clams and 4% of the inshore clams. Similarly in Table 31, it can be seen that 34 vessels accounted for 90% of the inshore clam revenues but only 8% and 11% of the FCZ clam and FCZ quahog revenues.

Table 32 contains information on the average gross revenues of the vessels. The average gross revenue of the 21 Class 1 vessels was $61,358 per vessel, the average gross revenue of the 56 Class 2 vessels was $128,352 per vessel, and the average gross revenue of the Class 3 vessels was $217,453. While the averages are interesting in their own right, it is more meaningful to examine the distribution of the average gross revenues within a vessel class.

Table 32.—*Performance of Permitted Vessels in Surf, Quahog and Inshore Combined*

Vessel class	Number of vessels	Average gross revenues
0–50	21	$61,358
51–100	56	$128,352
101–500	76	$217,453

Tables 33, 34 and 35 present detailed performance profiles for each of the vessel classes.

The data in Table 33 are for the 21 Class 1 vessels. These 21 vessels were divided into four arbitrary groups (chosen by computer analysis) depending on the average gross revenues. Three of these 21 vessels were barely active at all (average gross revenue of $583). For the more active vessels, the range of the gross stocks was from $39,154 (7 vessels) to $139,613 (3 vessels). One fact that is illustrated in Tables 33, 34 and 35 is that the more productive vessels in any vessel class were generally less involved in the inshore clam fishery and apparently spent more hours in offshore activities. Further, those groups within the vessel classes that spent more total hours in the offshore fisheries were also generally more productive in terms of revenues generated per hour of time fishing. These facts are illustrated in the Class 1 profile.

It should be noted that the data in Tables 33, 34, and 35 for productivity per hour fished refers to only those hours for which both catch and hours fished were reported. Generally, the majority of the total catch data had associated data on hours fished.

Table 33.—*Performance Profile 1, Class 1**

	I	II	III	IV	Group average
Number of vessels	3	7	8	3	21
Average gross revenue (dollars)	583	39,154	74,230	139,613	61,357
Offshore clam revenue (dollars)	583	15,210	58,634	120,203	44,990
Quahog revenue (dollars)	0	1,260	0	0	425
Inshore clam revenue (dollars)	0	21,684	15,596	19,410	15,942
Average hours clam fishing*	———	197	397	584	301
Dollar/hour clam fishing*	———	$79	$134	$196	$139
Average hours quahog fishing*	———	———	Trace	———	———
Dollar/hour quahog fishing	———	———	Trace	———	———

*Only for those catches for which time fished was reported.

The vessels in Group IV spent 196% and 47% more hours fishing for the FCZ clam that Groups II and III, respectively, and were 148% and 46% more productive on an hourly basis, respectively. While not presented in this table, average dredge size, and horsepower of the vessels generally increase from Groups II to IV. A subsequent section presents a production function for these vessels that references these facts.

Table 34 contains the performance profile for Class 2 vessels. Based on the range of gross revenues, 5 groups were selected for comparative purposes. The average gross stocks of the groups range from $34,548 (5 vessels) in Group 1 to $255,172 in Group IV (7 vessels). The highliners (Groups IV and V) had little involvement in the inshore clam fishery, spent more hours in the offshore clam and quahog fisheries, and were more productive on an hourly basis. Further (not presented in the table), the average dredge sizes and the horsepowers of the highliners were greater than Groups I to III. One interesting fact that is presented in Tables 34 and 35 is that the revenues per hour of reported quahog fishing were, except for Class III–Group II, larger than the revenues per hour of FCZ clam fishing. It should be remembered, however, that for the vessels, the average total revenues from quahog fishing were substantially less than the average total revenues from FCZ clam fishing.

Table 34.—*Performance Profile 1, Class 2*

	I	II	III	IV	V	Group average
Number of vessels	5	15	16	13	7	56
Average gross revenue(dollars)	35,548	78,556	16,569	167,569	155,172	128,350
Offshore clam revenue (dollars)	17,188	48,061	80,497	141,428	158,628	90,068
Quahog revenue (dollars)	0	4,106	15,124	19,753	96,543	22,073
Inshore clam revenue (dollars)	18,360	26,417	21,045	6,387	0	16,211
Average hours clam fishing reported	137	279	431.4	613	538	426
Average dollar/hour clam fishing	122	155	168	210	232	190
Average hours quahog fishing reported	0	12.8	71.78	75.7	190	65
Dollar/hour quahog fishing	0	316	199.66	248	465	317

Table 35 contains the performance profile for Class 3 vessels. The 76 vessels in this class were also divided into 5 groups. The average gross revenues ranged from $36,452 (20 vessels) in Group I to $606,385 (4 vessels) in Group V. It is interesting to note that the 21 Class I vessels outperformed the 20 Class III–Group I vessels by 68 percent. The conclusion reached for Class II vessels is the same here also: Groups IV and V vessels spent more hours fishing for FCZ clams and quahogs and were more productive on an hourly basis. Further, the average dredge sizes of Groups IV and V were larger than the other groups.

Table 35.—*Performance Profile 1, Class 3*

	I	II	III	IV	V	Group average
Number of vessels	20	19	16	17	4	76
Average gross revenues (dollars)	36,452	155,762	239,999	389,652	606,365	217,453
Offshore clam revenues	36,003	130,876	161,871	262,478	389,652	154,383
Quahog revenues (dollars)	234	17,219	72,143	127,083	237,781	59,838
Inshore clam revenues (dollars)	214	7,667	5,981	0	0	3,232
Average hours clam fishing reported	187.5	571.2	572.25	676.38	611.3	496
Average dollar/hour reported clam fishing	164	206	252	335	525.8	273
Average hours quahog fishing reported	1.9	89.49	160.78	269.2	363.8	140
Average dollar/hour reported quahog fishing	235	154	361.5	428	569.0	386

Summary of Key Vessel Groups

Table 36 is provided so as to enable the reader to link the previous information on catch concentration to the various vessel class-group constellations. For example just considering the harvesting activities of the 4 vessels in Class III—Group V (in the table this is "C3–V"), we pick up 9.7 percent of the total revenues from all species. The groups themselves were ranked in this basis of the average total revenue generated per vessel in the group. Thus, we see that by examining the activities of only 57 vessels or about 37 percent of the 153 vessels examined, we can account for about two-thirds of the FCZ clam revenues and 90 percent of the quahog revenues.

Table 36.—*Summary of Key Vessel Groups*

Group rank	Group	Number of vessels	Cumulative number of vessels	Cumulative percent of total vessels	Cumulative percent of total revenue	Cumulative percent of offshore clam revenue	Cumulative percent of inshore clam revenue	Cumulative percent of quahog revenue
1	C3-V	4	4	2.6	9.7	8.3	0	16.4
2	C3-IV	17	21	13.7	36.1	33.4	0	53.7
3	C2-V	7	28	18.3	43.8	36.6	0	65.3
4	C3-III	16	44	28.7	59.1	54.2	6.4	85.2
5	C2-IV	13	57	37.2	67.8	60.5	11.9	89.6
6	C3-II	19	76	49.6	79.6	78.7	21.6	95.2

Vessel Production Function

A vessel production function is the technical relationship between inputs and outputs. A production function is useful in the determination of which physical and operating characteristics of the vessels are useful for "explaining" variations in the outputs generated by the vessels (since there are two outputs considered, it is more relevant to use revenues as the output variable). For the vessels, the general functional form specified was:

$$Y = f(X_1, X_2, X_3, X_4, X_5)$$

where

Y=Total revenues from FCZ surf clam and ocean quahog

X_1=Dredge size (inches)
X_2=Gross Registered Tonnage (tons)
X_3=Horsepower
X_4=Hours Surf Clam Fishing
X_5=Hours Quahog Fishing

The equation was estimated in a linear form. The data that were utilized were from the 1978 license and logbook files. The estimation procedure utilized was ordinary least squares.

Because of the high degree of correlation among the physical characteristics of the vessels and its associated problem of multicollinearity, the specification that provided the "best fit" in terms of the standard statistical tests was:

$$Y = f(X_1, X_4, X_5)$$

The results are presented in Table 37. The coefficient of determination (R^2) is equal to about 80%, indicating that 80% of the variation in the revenues among the vessels can be "explained" by usage of this equation.

This equation could be useful for the prediction of the impact on the existing fleet of new vessels coming into the fishery. It is interesting to note that the regression coefficient for "quahog hours fishing" is larger than that for "FCZ clam hours fishing". This is reflective of the comments presented earlier. The coefficient for the dredge size was 1495, which suggest that, all other factors held constant, a vessel would be expected to generate an additional $1,495 in total revenues as the size of the dredge is increased by one inch.

Table 37.—*Surf Clam and Ocean Quahog Vessel Production Function*

[Dependent Variable: Total FCZ Clam and Ocean Quahog Revenues]

Variables	Coefficient	T statistic
Constant	−122,354	−6.388
Dredge Size (inches)	1,495	8.758
Clam Hours Fishing	220	11.33
Quahog Hours Fishing	388	16.43

R2=.7907, Durbin Watson=1.97, F Value=170.3.

Vessels Net Revenues

All of the previous information presented is in terms of gross revenues and does not address the issues of net income to the vessels, crew shares, return on investment, etc. Basically, this is due to the fact that no cost data were required to be provided in the logbooks, only gross revenue information.

Actual Versus Forecasted Performance for Harvesting Sector

The original Surf Clam and Ocean Quahog FMP contained forecasts of the economic impact on the harvesting sector and processing sector due to the imposition of the quotas. However, the actual regulations that were in place during 1978 differed substantially from those regulations that were originally contemplated, namely the four day fishing week, which constituted some of the assumptions behind the economic

analyses, compare the previous data presented to those in the original FMP. Thus, any comparisons are rather tenuous. Also, the number of vessels actually registered and active in each tonnage class differed from the numbers that were believed to be in the industry in 1978. Nevertheless, it is useful to examine some aggregate performance comparisons in terms of total production, prices, and revenues.

Domestic Harvesting Capacity

Appendix I contains a review of possible harvesting capacity for surf clam and ocean quahog. Based on the above and on the analysis in Appendix I, US harvesting capacity for surf clam is at least equal to the quotas proposed in the FMP for surf clam (1,800,000 bushels) and ocean quahog (4,000,000 bushels).

IX–2. Domestic Processing Sector

This section attempts to provide a descriptive analysis of the surf clam and ocean quahog processing sectors during the 1971–1977 period. This section does not contain an estimate of the impact of the FMP on the processing sector during 1978 since 1978 data are not available at this time.

Number of Plants

Surf clam based products have historically comprised the vast majority of the total US production of canned clam chowders, whole and minced clams, breaded clam products, and canned sauces and juices. These four product groups are the principal finished product lines for all clam products. In 1977, however, quahog based finished products comprised about 12 percent of the value of all clam finished product production compared with an average of less than 1% during the 1971 to 1976 period.

Surf clam and ocean quahog are processed in the New England, Middle Atlantic, and Chesapeake Bay regions. Table 38 presents data on the number of surf clam and ocean quahog processing plants by State for the years 1971 to 1977. As can be seen from Table 38, there has been little change in the total number of clam plants since 1972 nor have any significant changes occurred within any particular State. During the period 1973–1976, essentially all of the quahog processed production was generated from plants in Rhode Island. These plants also produced trivial amounts of surf clam based products. However, in 1977 the production of finished quahog products increased dramatically with 8 plants in Delaware, New Jersey, and Maryland generating about $11.00 million of finished product production. These same plants also produced surf clam products.

Historically, the plants in Rhode Island have reported the vast amount of their production to be shucked output only, which is typically an intermediate product.

Table 38.—*Number of Plants by State*

Year	ME	MA	RI	NY	NJ	PA	DE	MD	VA	Total
1971	1	7	*5	5	16	2	3	9	7	55
1972	1	5	*5	4	14	2	3	8	8	50
1973	1	6	*3	4	15	2	3	7	6	47
1974	1	6	*4	4	15	2	3	7	7	49
1975	1	7	*6	4	13	2	3	7	7	50
1976	1	6	*5	3	15	2	3	6	8	49
1977	1	5	*4	3	13	3	**3	7	8	47

* Of these total number of plants in Rhode Island, some of them processed only quahogs. The number of plants that produced only quahogs were: 1971—3, 1972—4, 1973—1, 1974—1, 1975—3, 1976—3, and 1977—1.
** One of these plants produced only quahogs.

Production

The output of the surf clam and ocean quahog plants listed in Table 38 include both intermediate and final products. The intermediate products are fresh and frozen shucked surf clam and ocean quahog meats. These meats are typically then further processed into a variety of finished product forms. These include canned clam chowder, canned whole and minced clams, canned sauces, canned juices, and breaded products. Generally, quahog have not been successfully utilized in the breaded strip lines.

The method of raw material acquisition differs among those plants that produce finished products. Some finished product plants produce their own shucked output which is consumed in their own finished product forms. Some of the same plants also offer some of this shucked output for sale to other finished product plants. On the other hand, some finished product plants apparently acquire all of their shucked raw material from those plants that produce only shucked output and those that produce both finished and shucked output. In short, there are a variety of practices extant regarding raw material acquisition.

In order to avoid problems of double counting, it is more meaningful to examine finished product production only, rather than total production (which includes the intermediate product). Since the finished products are measured in a large variety of ways, i.e, gallons, various sizes of cases, and pounds, it is more useful to examine the trends in production in terms of total value overall and by-product groups during this period. These trends are depicted in Figures 31 and 32.

As can be seen from Figure 31, until 1977 surf clam based finished products comprised essentially all of clam processed production when, as stated previously, quahogs comprised above 12 percent of the total value. The undeflated value of finished product production has more than doubled during this period. Specifically, the undeflated value of surf clam finished product production has increased from about $32 million in 1971 to about $82 million in 1977, a compound growth rate of about 17 percent. The deflated value or value of real surf clam output increased from $28 million to $43 million, a growth rate of about 8 percent. Undeflated finished product quahog production increased from trivial levels to $11 million in 1977. Again, these are production data and not sales data. There are currently no data available on sales and inventories. It is assumed that production reflects sale.

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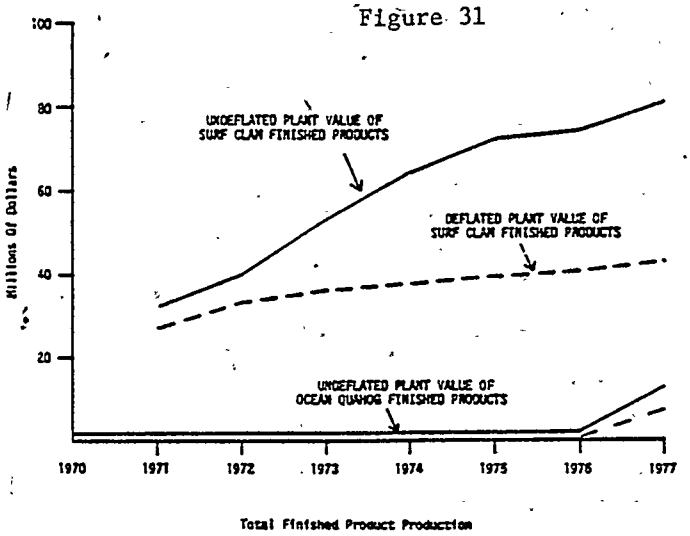
Figure 31



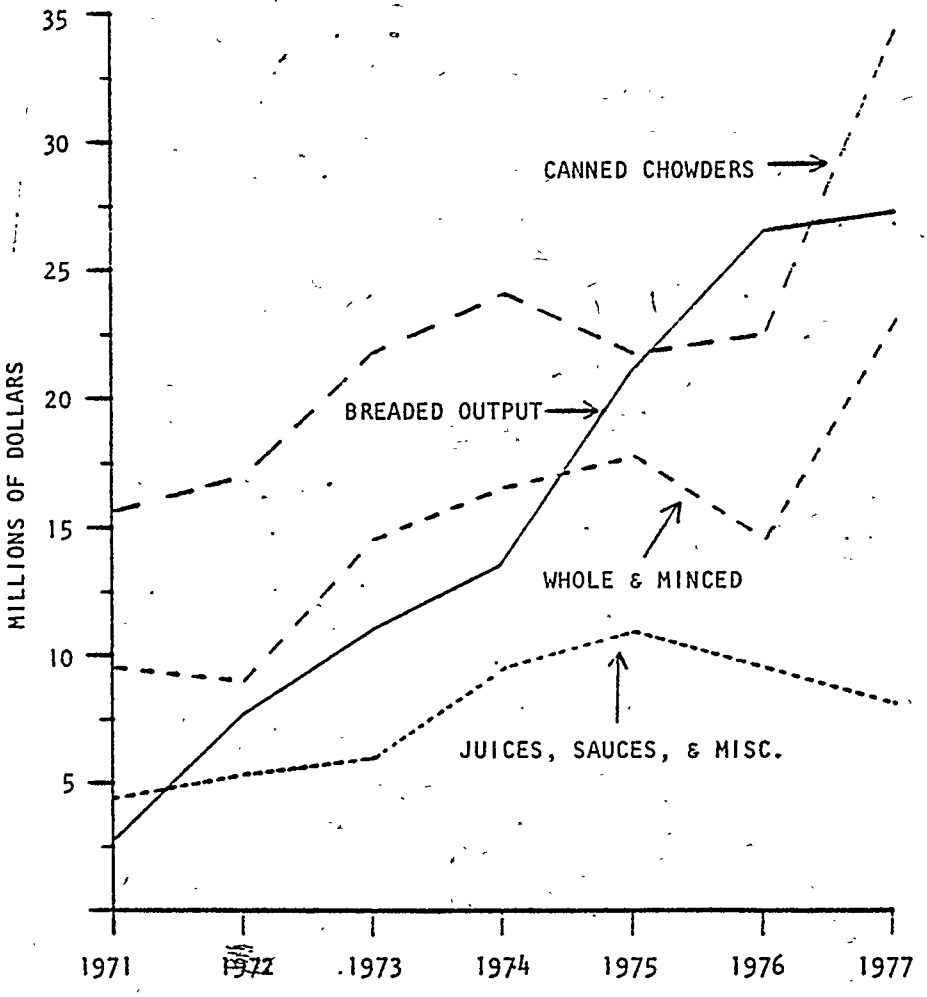


Figure 32

Undeflated Wholesale Value Of Finished Surf Clam Production

(Includes ocean quahog production in 1977 data.
Ocean quahog product production data unavailable for prior years.)

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While the total finished product production grew considerably during this period, it was at an uneven rate for the various product groups. This fact is illustrated in Figure 32. As can be seen from Figure 32, the product line that exhibited the greatest compound growth (in terms of undeflated value) throughout this period was for breaded production. Canned chowders and canned whole and minced clams had peaks in the 1974–1975 period. Both lines declined in apparent sales in 1976 relative to their earlier peaks before increasing again in 1977 to new highs. For the canned sauces line, the period was one of slow growth.

The relative compound growth rates that occurred during this period are listed in Table 39. They range from 10% for sauces and juices to 45% for breaded output in regards to undeflated value. The deflated growth values ranged from 1% for canned sauces and juices to 34% for breaded output.

Table 39.—*Relative Compound Growth Rates of Undeflated and Deflated Value of Production for Clam Based Finished Products*

	Undeflated (pct)	Deflated (pct)
Canned Chowder	14	4.8
Canned Whole and Minced	16	6.5
Canned Juices and Sauces	10	1.0
Breaded	45	34.0
Total Finished Production	17	8.0

Meat Weight Flow

Figure 33 contains a schematic that attempts to present an approximation to the physical meat weight flow of surf clams through the intermediate and final product stages. The numbers presented within the final product line boxes represent the approximate surf clam meat weight content of the products produced by these sectors in 1977. These numbers should, at this time, be considered only approximations due to the variability of the meat weight content of the same product by various producers. An attempt is currently underway to develop more precise estimates on this matter.

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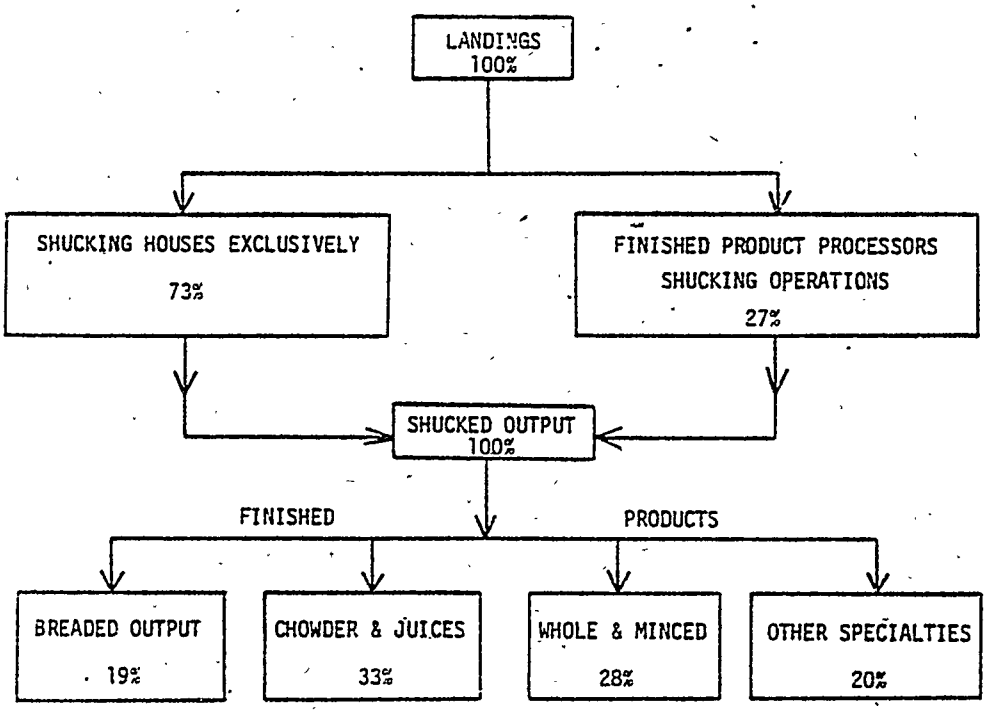
Figure 33



Surf Clam Meat Weight Flow - 1977

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Employment—Surf Clam Plants

Table 40 contains information on the approximate surf clam related employment in 1977. Since many of these plants produce other products that are not clam based and since the plants do not report employment by product line, these figures are only an approximation. Further, the data reported to NMFS does not distinguish between office and plant employment.

There are a variety of approaches available to attempt to allocate the employment data between product lines. One approach is to allocate employment based on the relative total values of the product lines. This is the approach taken in the data presented in Table 40. The plants in 1977 were categorized into four groups depending on the product line mix. The first category is the group of plants that only produced shucked output. The second group is the group of plants that only produced breaded products. The third group only produced canned products. The fourth group produced a variety of products. It is estimated, by using this approach, that the surf clam related employment in 1977 was 1,938 man years.

Another approach is to estimate an employment response function for these plants. This attempts to empirically relate changes in the volume (product weight) of various product lines and associated changes in employment. The approach is also useful for developing an estimate of probable changes in employment associated with changing quotas (with associated changes in the volume of finished product line output). The general functional form specified was:

$Y=f(X_1, X_2, X_3, X_4, X_5)$

where

Y=total employment in the plant (man years)
X_1 = volume of shucked output in the plant (lbs.)
X_2 = volume of of breaded output in the plant (lbs.)
X_3 = volume of canned output in the plant (lbs.)
X_4 = volume of total clam output in the plant (lbs.)
X_5 = volume of other than clam output in the plant (lbs.)

The specific functional form specified varied for the four different plant types, with only the relevant input variables selected. The data that were utilized were from the 1977 annual NMFS survey of processing plants. The estimation procedure utilized was ordinary least squares.

Table 41 presents the results of the cross sectional employment response function analysis by plant type. One interprets the results in the following fashion: the value of the regression coefficient for shucked output is .000024. Thus, for every 1/.000024 or 41,666 pounds of shucked output, it would be expected that there would be a change in employment of one man year. The other coefficients are interpreted in a similar fashion.

Table 40.—*Surf Clam Processing Sector Employment Summary—1977*

Plant type	Number of plants	Total employment	Clam related employment*
Shucking Plants Only	21	1,332	1,215
Breaded Output Only	7	1,056	109
Canned Output Only	8	485	254
Mixed Production	9	526	360
Total	46	3,399	1,938

*Based on the relative value of clam production.

Table 41.—*Results of Employment Response Function Analysis*

	Plant Type			
	Shucking house	Breeding plant	Canning plant	Mixed output plant
Constant	14.66	27.18	26.54	22.00
Shucked output coefficient	.000024 [1](t=7.3)			
Breaded output coefficient		.00005 [2](t=1.78)		
Canned output coefficient			.000005 [2](t=2.06)	
Total clam output coefficient				.000013 (t=9.5)
Other production	.000029 [2](t=1.4)	.000007 [1](t=10.79)	(3)	(3)
Number of observations	21	9	8	7
R2	.796	.98	.42	.94

[1]Significant at 5 percent level.
[2]Significant at 10 percent level.
[3]Not significant.
[4]Dropped due to multicollinearity problem.

Industry Structure

There is an ongoing study on the structure of the processing sector. The results of this analysis will be included in later amendments of this FMP.

Financial Performance

There are currently no published or unpublished data available to determine the financial performance of the firms in the processing sector in terms of traditional indicators, namely, net income, return on assets, return on equity, return on sales, etc. The only data that are available are the value of production data utilized previously. The distribution of the value of production among the plants in the industry is addressed in the next section.

Size Distribution, Dependency, and Product Lines of Surf Clam Plants

This section examines the data on a plant basis for both intermediate and finished product plants. Figure 34 presents the size distribution of the value of clam related production by plant for 1976. As can be seen from Figure 34, 25 of the plants in 1976 had surf clam related production of $2.0 million or less. Of these 25 plants, 10 were plants whose clam production consisted of shucked output exclusively. The remaining 15 plants were relatively minor (in the sense the percent of total production in any product line) of a variety of finished products and produced some shucked output.

There were 14 plants that had sales of between $2.0 and $5.0 million. Eleven of these 14 plants were exclusively engaged in shucked output production and they included the major producers in this product sector. Of the remaining 3 firms, they produced a variety of shucked, breaded and canned output. Some of these firms were among the principal producers of breaded output production and canned production.

Finally, there were 7 plants whose value of production was greater than $5.0 million. These included those plants that dominated the canned clam chowders and canned whole and minced, and breaded output sectors.

For the industry as a whole, there have not been any dramatic shifts during the 1971 to 1976 period in terms of the distribution of the percent of total gross revenues derived from surf clams. This is illustrated in Table 42. During this period on the average about 56 percent of the plants derived more than 90 percent of their total gross revenues from surf clam related activities. About 12 percent of the plants derived between 61 to 90 percent of their revenues from clam production. Of the remaining 32

percent of the plants, about 14 percent of the plants derived between 30 to 60 percent of their revenues from clam, with the remaining 18 percent of the plants deriving less than 30 percent.

For the top seven plants, four of the plants derived over 90 percent of their total plant production from clam products, two of the plants derived over 80 percent of their production from clam, while 1 derived about 25 percent of its total revenues from clams.

For the 14 middle sized plants, 11 derived 100 percent of their income, 1 derived over 80 percent, 1 derived 70 percent, and 1 derived about 10 percent of its total value of plant production from surf clams.

While the value of shucked and final product production accounted for by the smallest 25 plants was only a small percentage of the total, their clam related production was extremely impotant to some of them. For 10 of these plants, their total revenues were 100 percent from clams: Five of these 10 plants produced shucked output only. Of the remaining 15 plants, 10 had dependency ratios of less than 50 percent, and 5 had ratios between 50 percent and 90 percent.

In summary, those plants that are the major finished product producers were generally the largest plants overall, and were extremely dependent on clam production. Of the middle tier of plants, they were generally extremely dependent on clam production. Finally, about 40 percent of the smallest 25 plants were extremely dependent on clam, while about 43 percent of these small plants were some of the least dependent.

Prices

An analysis is currently ongoing to develop an econometric market model of the surf clam and ocean quahog sectors. This model will be utilized in the 1980 impact assessment.

Table 42.—*Dependency of Those Plants Producing Surf Clam on Surf Clam Revenues**

Percent of gross revenue	Number of plants					
	1976	1975	1974	1973	1972	1971
0-10	4	3	4	2	1	6
11-20	3	1	2	3	2	4
21-30	2	4	3	2	4	1
31-40	1	2	0	2	2	2
41-50	2	4	3	2	1	6
51-60	2	1	4	1	2	2
61-70	2	4	0	4	3	2
71-80	0	2	0	1	2	0
81-90	5	2	5	0	1	1
91-100	25	24	26	29	28	28
Total	46	47	47	46	46	52

*Does not include data for those firms producing only quahog.

Processing Sector Capacity

Based on the above data and the review of harvesting sector capacity, it seems reasonable to conclude that processing capacity is at least equal to the quotas for surf clam and ocean quahog proposed in this FMP amendment.

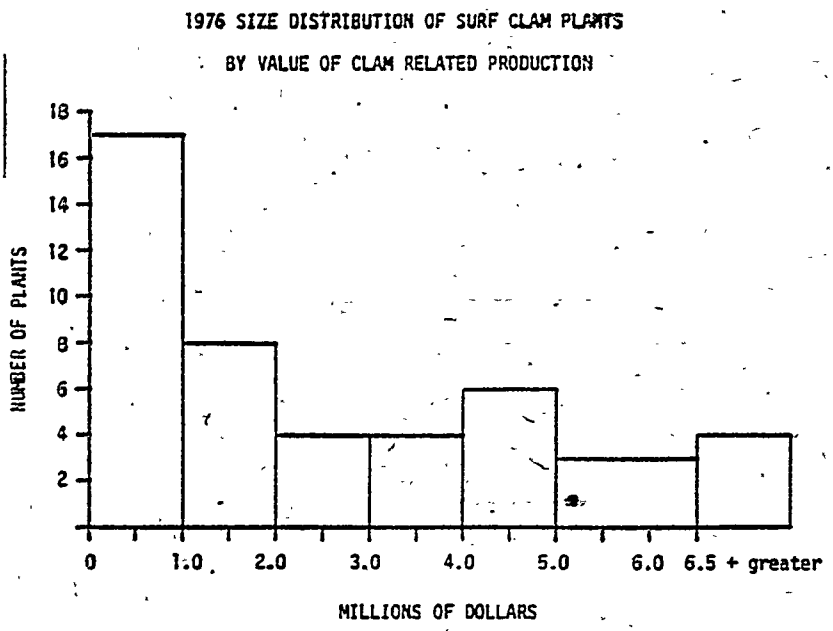

Figure 34

IX-3. International Trade

Data are not available to specifically identify the international trade in surf clam and ocean quahog.

X. Descriptions of the Businesses, Markets, and Organizations Associated with the Surf Clam and Ocean Quahog Fishery

X-1. Relationship Among Harvesting and Processing Sectors

The information for this analysis is not available.

X-2. Fishery Cooperatives or Associations

The information for this analysis is not available for ports in the Mid-Atlantic region. Data for selected ports in New England are presented in Table 43.

X-3. Labor Organizations Concerned With Surf Clam and Ocean Quahog

The information for this analysis is not available for ports in the Mid-Atlantic region. Data for selected ports in New England are presented in Table 43.

X-4. Foreign Investment in the Domestic Surf Clam and Ocean Quahog Fishery

The information for this analysis is not available.

XI. Description of Social and Cultural Framework of Domestic Surf Clam and Ocean Quahog Fishermen and Their Communities

Uniform socio-economic data on fishing communities are not available. Certain information is available from the federal census on a county basis. Therefore, surf clam and ocean quahog landings were tabulated by county and analyzed to identify those counties with a significant involvement in these fisheries (Tables 44 and 45). Atlantic and Cape May, New Jersey, Northampton and Accomack, Virginia, and Worcester, Maryland, were selected as being relatively important.

Table 43.—*1976 Labor Force Characteristics for Offshore Fishermen in New England Ports*

Ports	Number of full-time fishermen	Unions and cooperatives	Approximate average age	Major ethnic groups
MA				
Boston	100	Union and nonunion.	55	Yankee, Portuguese.
Chatham	60-80	Cooperative	45	Yankee.
Gloucester	500	Union and nonunion.	45	Italian, Yankee.
Menemsha	30	None	40	Yankee.
New Bedford	400	Union	43	Yankee/Norwegian/ Canadian/ Portuguese.
Provincetown	150-200	Cooperative and nonunion.	40	Yankee.
RI				
Newport	80	Union and nonunion.	45	Yankee/Portuguese/ Italian.
Port Judith	120	Cooperative	40	Yankee/Norwegian.
ME				
Portland	150	None	40	Yankee.
Rockland	80	None	40	Yankee.
CT				
Stonington	45	None	50	Yankee.
NH				
Rye	20	None	40	Yankee.

Source: Smith and Peterson (1977).

Table 44.—*Surf Clam and Total Landings, by County, 1977*

(Landing in thousands of pounds)

State and county	Surf clam	Total	Surf clam share of county total	Dist. of surf clam	Cumulative share of total landings
			Percent	*Percent*	*Percent*
NJ Cape May	16,497.3	49,561.1	33.29	32.08	32.08
VA Northampton	8,637.5	14,803.6	58.35	16.80	48.88
MD Worcester	8,392.9	12,422.0	67.56	16.32	65.20
VA Accomack	7,153.6	17,674.3	40.47	13.91	79.11
NJ Atlantic	4,657.6	7,116.1	65.45	9.06	88.17
NY Nassau	3,275.1	4,549.5	71.99	6.37	94.54
NJ Ocean	1,786.2	17,742.1	10.07	3.47	98.01
MA Bristol	253.0			0.49	98.50
MA Barnstable	218.3			0.42	98.92
RI Washington	197.2	46,845.3	0.42	0.38	99.30
NJ Monmouth	188.6	102,349.9	0.18	0.37	99.67
NY Kings	149.9	1,690.9	8.87	0.29	99.96
MA Dukes	13.0			0.03	99.99
RI Newport	1.0	23,610.5	<0.01	<0.01	<99.99
Total	514,212.3			100.00	100.00

< less than.

Table 45.—*Ocean Quahog and Total Landings, by County, 1977*

(Landing in thousands of pounds)

State and county	Ocean quahog	Total	Ocean quahog share of county total	Dist. of ocean quahog	Cumulative share of quahog landings
			Percent	*Percent*	*Percent*
NJ Cape May	12,615.0	49,561.1	25.45	67.43	67.43
RI Washington	2,714.4	46,845.3	5.79	14.51	81.94
NJ Atlantic	876.0	7,116.1	12.31	4.68	86.62
MD Worcester	660.5	12,422.0	5.32	3.53	90.15
VA Northampton	658.1	14,803.6	4.45	3.52	93.67
NJ Ocean	625.5	17,742.1	3.53	3.34	97.01
VA Accomack	310.2	17,674.3	1.76	1.66	98.67
MA Barnstable	114.2			0.61	99.28
RI Bristol	79.2	515.3	15.37	0.42	99.70
MA Bristol	50.8			0.27	99.97
RI Newport	5.1	23,610.5	0.02	0.03	100.00
MA Dukes	.6			<0.01	
Total	18,709.6			100.00	100.00

< Less than.

Table 46.—*Selected 1970 Population and Economic Characteristics for Counties with Significant Surf Clam and Ocean Quahog Landings*

	US	Atlantic	Cape May	Northampton	Worcester	Accomack
Population						
Total (000)	203,212	175	60	14	24	29
US rank		210	567	1,871	1,276	1,104
Per sq. mi.	57	308	223	66	51	61
% Change, 60–70	13.3	8.8	22.7	−14.9	3.0	−5.3
% Net mig. 60–70	1.7	4.8	21.9	−21.5	−5.5	−9.4
% Female	51.3	53.4	51.3	52.7	52.0	52.2
% Urban	73.5	81.1	61.8		14.6	
% Under 5 yrs.	8.4	7.5	6.6	7.3	8.1	7.2
% 18 yrs. & over	65.6	68.6	71.7	65.1	65.2	67.8
% 65 yrs. & over	9.9	16.3	20.0	14.3	12.9	15.5
Median age	28.3	35.5	38.9	33.7	31.9	35.0
Over 25, median school yrs. completed	12.1	11.2	11.3	9.2	10.2	9.5
Labor force						
Total (000)	82,049	70	21	6	10	11
Civilian	80,051	69	20	6	10	11
% Fem./w husb.	57.0	51.6	54.8	56.6	60.1	59.7
% Unemployed	4.4	5.7	6.5	12.4	3.2	6.3
% Emp. in mfg.	25.9	16.5	11.4	14.9	22.3	23.7
% Emp. outside county	17.8	14.6	15.8	9.1	18.1	20.7
% Families with female head	10.8	14.7	10.1	15.4	11.9	13.3
Median family income ($)	9,586	8,757	8,295	4,777	7,386	5,670
% Families low income	10.7	9.9	8.9	32.2	17.3	25.2
Mfg. estab.						
Total	311,140	248	52	17	50	56
% 20–99 emp.	24.3	27.4	26.9	17.6	34.0	10.7
% 100 or more emp.	11.2	10.1	5.8	11.8	14.0	5.4
% Change, value added, 63–67	36.4	53.8	42.8	7.3	39.5	18.4
Retail sales						
% of total in eating & drinking places	7.7	16.4	19.6	4.8	12.2	5.1
Selected services						
% Receipts, hotels, etc	11.6	53.8	58.3	D	51.2	D
% receipts, amusements	13.7	20.9	18.1	D	27.3	D

D=Data not reported.
Source: County and City Data Book, 1972.

Data from the census are presented in Table 46. Data on fisheries employment are not available on the county level. The general condition of the economies of Northampton and Accomack Counties can be observed from Table 46, perhaps leading to the conclusion that stabilization of processing sector employment is an important consideration in this FMP. Income levels in all of the counties is below the national median.

XII. Determination of Optimum Yield

XII–1. Specific Management Objectives

The Mid-Atlantic Council adopted the following objectives to guide management and development of the surf clam and ocean quahog fishery in the northwestern Atlantic.

1. Rebuild the declining surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield (MSY), based on the average yearly catch from 1960 to 1976.

2. Minimize short-term economic dislocations to the extent possible consistent with objective 1.

3. Prevent the harvest of ocean quahog from exceeding maximum sustainable yield and direct the fishery toward achieving optimum yield.

XII–2. Description of Alternatives

The alternatives that could be applied to the surf clam fishery, the ocean quahog fishery, or both may be categorized as conservation alternatives, allocation alternatives, access control alternatives, and management unit alternatives. The conservation alternatives are: No FMP, annual quotas, quarterly quotas, size limits, and gear restrictions. Allocation alternatives are: No explicit allocation system, allocations to individual fleet sectors, individual vessel quotas, and stock certificates. Access control alternatives are: No access control, a moratorium on the entry of new vessels, and permit limitations. Management unit alternatives include: The resources in the northwest Atlantic FCZ, the resource in the northwest Atlantic FCZ and territorial sea, and the resource in the mid-Atlantic FCZ.

The above alternatives can be applied in various combinations to the species that are the subject of this FMP. It must also be noted that the alternatives are not mutually exclusive and that a particular alternative, while it has been assigned to a particular category for descriptive purposes, may, in fact, have impacts on other categories, e.g., gear restrictions, while defined as a conservation alternative, may also have impacts on allocations.

XII–3. Analysis of Beneficial and Adverse Impacts of Potential Management Options

Conservation Alternatives

1. *No FMP:* With no plan, the surf clam fishery would probably be severely depressed, dislocating participants in all segments, and allowing only a small number of participants to make a living. It could also significantly alter the structure of the industry. Without management, it is likely that expansion of the quahog fishery would result in over-exploitation on a scale similar to that which occurred in the surf clam fishery.

2. *Annual Quotas:* Annual quotas should assure the preservation of the resources. The quotas could be set at various levels depending, in the case of surf clam, on the desired rate of rebuilding of the resource relative to the

associated level of impact on the industry, and, in the case of ocean quahog, on the desired level of protection of the resource relative to the rate of expansion of the fishery. Annual quotas with no other management measures could lead to significant economic hardship in the surf clam industry. Establishment of lower allowable harvest levels would provide better protection of the quahog resource and accelerate the recovery of the surf clam fishery but at a higher short-term economic cost to those presently in the surf clam and ocean quahog fisheries.

3. *Quarterly Quotas:* Quarterly quotas would have the same conservation attributes as an annual quota but could serve to lessen economic hardship in the surf clam industry. The need for quarterly quotas varies with the allocation system adopted. In the surf clam fishery they would probably be necessary for all allocation alternatives except individual vessel allocations. The quarterly quotas proposed in Amendment #2 differ somewhat from the quarterly quotas established in the original FMP. The primary reason for the shift is to increase the size of the two winter quarter quotas to reflect the possible increase in the level of fishing effort that will be caused by the bad weather make-up day provision of Amendment #2. The original FMP had quarterly quotas of 350,000 bu. for the winter months and 550,000 bu. for the good weather months and the possibility of a four day fishing week, with reductions to the fishing week to minimize the need for closures. Soon in the operation of that FMP it became clear that, given available harvesting capacity, a fishing week of no more than 24 hours per vessel was generally adequate to spread the harvest throughout the quarters. Vessels were required to identify the days of the week during which they would be fishing (in 12 hour increments) prior to the beginning of each quarter and changes during the quarter are not permitted. Therefore, if weather conditions are such that fishing is not possible, particularly for the smaller vessels, the affected vessels lose the opportunity to fish. Since there may be extended periods of bad weather during the months of December through March, it has been demonstrated that certain vessels may not have the opportunity to fish for a relatively extended period of time. To address this problem, the concept of a bad weather make-up day was developed. There are several alternative approaches to the bad weather make-up day included in Amendment #2. The Mid-Atlantic Council has recommended a make-up day of the same duration as the day missed to be taken on the fishing day following the day missed. The effect of this provision would be to increase the probability of more vessels fishing during the December–March period than without the provision. Therefore, in order to provide the make-up day, which increases the ability of certain vessels to fish at all during the bad weather months, it was considered necessary to adjust the quarterly quotas to minimize the possibility of closures during the winter quarters. It is recognized that this reduces the quotas for the good weather quarters, but, if the quota for the January–March quarter is not harvested, the surplus may be transferred to the April–June quarter. Therefore, the combination of the adjusted quarterly quotas combined with the bad weather make-up day should provide the opportunity for all vessels to fish at some time throughout the year and still minimize the possibility of closures.

4. *Size Limits:* The imposition of a size limit for surf clams is considered necessary at this time because of the survey cruise report of a substantial number of pre-recruit surf clams and because of the great incentive to harvest surf clams of any size to maximize catches. It is also considered necessary to maintain the provision of closing areas in order to protect pre-recruit clams. The size limit of 4.5" is in conformity with general industry practice, which discourages the harvest of clams under 4.5". The Council is proposing an allowance of 800 clams of under 4.5" per standard 32 bushel cage (60.16 cu. ft.). Enforcement would be facilitated through the use of a table that would convert the 800 undersize claims per 60.16 cu. ft. into the appropriate number of undersize clams for cages of other than 32 bu. capacity or for partially full cages. The allowance is based on a standard of approximately 20 percent undersize clams. Discards should not be a significant problem given the undersize allowance since surf clams are generally not mixed by size in the beds, so that a fisherman can move to another area if he discovers that he is in an area with a significant number of undersize clams.

5. *Gear Restrictions:* It would be possible to limit dredge size, pump size, and possibly other gear. Such limits would be designed to curtail effort, either in lieu of or in conjunction with other management measures. Such measures would probably be effective in the short-run. However, experience with similar measures in other fisheries has shown that, in the long-run, they are ineffective because fishermen's ingenuity has proven adequate to negate the effects of the measures. Therefore, the only real effect of such measures is to increase inefficiency. It is likely that such measures would have high enforcement costs.

Allocation Alternatives

1. *No Explicit Allocation System:* Under this alternative, the annual species quotas would be established with no explicit user-group allocation made. Quarterly divisions of the quotas could be made in order to ensure some spread of harvests over the year. In addition, fishing time restrictions could be superimposed over this. This system is used in the current Surf Clam and Ocean Quahog FMP.

2. *Allocations to Individual Fleet Sectors:* Under this alternative a limited number of vessel groups would be recognized for explicit allocations. Annual and quarterly allocations to these user-groups could be made, probably based on historical aggregate catch performance of the groups. This is essentially the system used in the Groundfish FMP.

3. *Individual Vessel Quotas:* Under this system each individual vessel in the fleet would be allocated a share of the overall annual quota. These shares would be established on a percentage basis so that the value of the shares would vary as the size of the quota varies from year to year. The basis for the initial distribution could reflect historical participation. By defining those who at any point are permitted to share in the resource the system is a form of access control. The quotas could be transferable and thus could be considered as marketable certificates. A new fisherman would, therefore, not be prohibited from entering the fishery, but would have to purchase share(s) from existing participants in order to do so. A limit on the number of shares that any single individual or corporation would be allowed to hold could be applied in order to prevent an undesirable concentration of shares. This alternative could take the form of an individual allocation to each vessel or a number of smaller allocations to each vessel, each equalling the vessel quota. If the large number of smaller allocations were adopted, it would be a stock certificate program. Given the large number of vessels which entered the surf clam fishery since 1977, the surf clam formula would probably need to take into account catch levels since the implementation of the current FMP.

Vessel quotas would be equitable if the initial allocation formula was equitable. It would have lower

enforcement costs than the current FMP since most enforcement would be from shore. There would be no need to regulate fishing time, so operations would be more efficient than under the current FMP. If the quotas were transferable, it would permit new entrants.

Under a stock certificate program the number of shares would be greater than the number of vessels currently in the fishery. The initial allocation of shares could be determined as described above. Such a system could be equitable to the extent that the formula used to make the initial allocation was equitable. There would be low enforcement costs since most enforcement would be from shore. There would be no need to regulate fishing days or times. There would be a lower cost to new entrants than with a vessel quota since a new entrant would only need to acquire as many shares as necessary to make an initial operation profitable. It would allow for the traditional method of entering the fishery. It would allow for economies of scale and for an operator to make micro-adjustments of scale by buying and selling shares to optimize individual operations. It would result in more accounting problems than a vessel quota since more shares would be involved.

Direct allocations might create some unemployment in the harvesting sector, since it could lead to the aggregation of the allocations of several vessels to one vessel and the retirement from the fishery of the other vessels. It would also lead to vessel equipment changes since the present regime leads to a harvester equipping his vessel to harvest the maximum volume of clams in a fixed time period whereas a direct allocation would permit the harvestor to maximize efficiency.

A modification of stock certificate or vessel quota systems could be effort quotas. In such a system the allocation to the vessel would be made in terms of fishing effort, probably fishing days. These could be calculated from records of catch per unit of effort. The allocations could be made for a year or on a quarterly basis. Since there are many factors that influence catch per unit of effort, such a system would probably need to be combined with gear restrictions. In addition, such a system would probably require quarterly allocations of the annual quota and possible closures because the imprecise nature of the effort allocations could lead to overfishing if effort limits were used alone.

Access Control Alternatives

1. *No Access Control:* This alternative would probably result in a significant adverse impact on economics in the surf clam fishery. The harvesting capacity of the existing fleet significantly exceeds the MSY and quotas likely in the next few years. Even though the surf clam fishery is a conditional fishery for purposes of federal financial assistance for vessel construction, it is probable that new vessels would enter the fishery if there were no access control. No access control seems to be needed in the ocean quahog fishery at this time, although an allocation system might be desirable during the life of this amended FMP.

2. *Moratorium on the Entry of New Vessels:* The current Surf Clam and Ocean Quahog FMP includes a moratorium on the entry of new vessels into the surf clam fishery in the FCZ. A moratorium would not be necessary with a vessel allocation or stock certificate program.

3. *Permit Limitations:* It would be possible to develop a system for the allocation of permits to participants in the surf clam and/or ocean quahog fisheries. In the surf clam fishery this would be a modification of the vessel moratorium that could provide for a specified number of new entrants annually if the condition of the stock improved to a predetermined level. In the ocean quahog fishery such a system could be used to control the rate of expansion of the fleet to guard against overcapitalization of the fishery in lieu of a moratorium at this time or in lieu of vessel allocations. Such a system would not be necessary with individual vessel allocations or with a stock certificate program.

Management Unit Alternatives

A variety of management units could be considered for this FMP. The management unit for the current FMP is the range of both species in the northwestern Atlantic FCZ. Alternatives could be surf clam and ocean quahog in the mid-Atlantic FCZ, or the range of both species in the FCZ and the territorial sea in the Atlantic. Sound management requires that a species should be managed throughout its range. However, New Jersey, which is the location of the most significant inshore surf clam fishery, has regulations which are not inconsistent with the objectives of this FMP. New York is developing regulations. The ocean quahog fishery, except in parts of New England, is an FCZ fishery. Therefore, although the mangement unit of the FMP does not manage the resources throughout their ranges, it provides for effective management working in conjunction with the State programs and should not be changed from what it is in the basic Surf Clam and Ocean Quahog FMP.

A possible consideration relative to management unit definition is the difference in character of the surf clam fishery in the Mid-Atlantic as opposed to the character of the fishery in New England. However, because of the mobility of the fleet and the enforcement problems inherent in significantly different management regimes in adjacent areas, it would probably be more effective to address these problems through other management measures rather than address these problems through management unit definition. In other words, the management unit could be defined as including the entire resource in the northwestern Atlantic but different management regimies could be developed to take into consideration the differences in the several fisheries. The inshore areas would be managed by the States. In addition, it would be possible to divide the surf clam fishery in New England from the surf clam fishery in the mid-Atlantic with differing management regimes for each management area. Several alternative dividing lines for this purpose have been suggested including 41° latitude, 71° longitude, and the dividing line between the jurisdictions of the New England and Mid-Atlantic Fishery Management Councils. The dividing line begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" latitude and 71°54'28.477" longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ (50 CFR 601.12(a), Federal Register, Vol. 42, No. 137, July 18, 1977, page 36980).

Impacts of Alternative Allocation Strategies

Harvesting sector: The benefits and costs to the harvesting sector are likely to vary significantly between strategies. Specifically, one would expect the total costs of harvesting the quota to be lower under a system of individual vessel quotas or stock certificates than under other systems.

Under a system of annual vessel quotas or stock certificates the fisherman would have the opportunity to harvest his share of the OY in a manner most appropriate to him. The vessel owner would not need to worry about being preempted in securing his catch, as would be the case under the other two strategies. Rather, he would apply his capital and labor most efficiently so as to reduce his costs of harvesting. Technological innovations would be

adopted given the incentive to reduce costs and maximize profits. An unknown amount of unemployment could be created in the harvesting sector through direct allocations since vessel operators could accumulate shares and retire vessels, leading to unemployment of crew members. Under both other strategies harvesting costs would rise as a result of a race between vessel operators to secure as large a share as possible of the annual or quarterly vessel group or industry quota before any closure or lower catch per unit effort restrictions would be enforced. The additional capital and labor that would likely be employed by the individual vessels in this race would increase the costs per unit of resource landed and result in economic inefficiency.

The nature and extent of fluctuations in ex-vessel prices under the three systems could vary with the pattern and variations in landings. In the New England area, under a system of vessel group allocations in the Groundfish FMP, prices to fishermen during late 1977 and 1978 were severely depressed during periods of open fishing followed by exceptionally high prices during periods of closures or restrictive trip limitations.

Under the indiviual vessel quota system, it is expected that prices would be relatively stable throughout the year as fishermen would be able to rationally respond to changing supply-demand conditions. Certainty of their own catches would allow the fishermen to play the market and would ensure more stable production and less fluctuation in prices to fishermen. The implication of price stabilization on total revenues to the fishermen would depend on the nature and share of the ex-vessel demand equation.

The above observations relative to costs and revenues in the harvesting sector suggest that net income to fishermen from harvesting a given quota could be greater under a system of individual vessel allocations or stock certificates than it would be under the other two options for allocations.

Processing Sector: Just as prices in the absence of an individual vessel quota system would fluctuate more over the season so would employment. Under a system of vessel group allocations employment in the processing sector could continue to be characterized by strong seasonal movements similar to those in landings caused by opening and closing of the fisheries or changes in regulations of catch per unit effort within vessel groups. This presents severe planning problems in the processing sector by creating uncertainties over raw material flow. Furthermore, it could increase the cost per pound processed during glut periods because marginal facilities would have to be placed in operation, additional shifts would be required, and overtime would have to be paid to process the clams. Increased storage costs occur as a result of excess supply in the distribution system.

Under a system of annual vessel quotas, with the expected reduction in fluctuations in landings, employment in the processing sector should be more stable throughout the year. Processors could rationally plan their operations and finances. It would also allow employees of processing plants to have more certainty over the flow of income throughout the year.

Prevention of Abrupt Changes in the Relative Shares of Individual User-Groups: The potential for abrupt changes in the relative shares of various harvesting user-groups appears to be greatest under a system of no explicit allocations. The surf clam fleet has demonstrated that its harvesting capacity exceeds the quotas prescribed so far. With only an annual quota competition between vessel groups for the quota is likely to favor the larger and more mobile vessels.

An allocation of quotas by vessel groups which uses current or recent catch performance by user-groups as criteria for deciding on the relative magnitude of the allocations is explicitly directed to preserve the relative shares of these user-groups over time. Competition within user-groups for the available group allocation might, however, result in changes over time in the relative shares of subgroups. The fewer the number of vessel classes recognized in a scheme of this nature the greater we may expect the heterogeneity among vessels in each group to be. In such cases, it is likely that during periods when the harvesting capacity of the group far outweighs the catch allocation of the group and when the race for the allocation is not restricted by trip limits, the relative shares of the vessels within an individual group may change in favor of the larger vessels. This effect might, however, be mitigated in situations where maximum catch limits per trip or week for all vessels in a given vessel class are set at a level which is significantly below the average catch per trip that the larger vessels in the group are capable of achieving.

Under the individual vessel quota or stock certificate systems, the initial distribution of the shares could be based on recent historic relative catch performance by individual vessels in the fleet. Thus, there would be no abrupt changes in the traditional pattern of fishing or in shares of vessel groups. However, if an individual vessel operator wished to expand or contract the scale of his operations, he could achieve this through the purchase or sale of certificates.

Freedom of Choice and Decision-making and Extent and Complexity of Regulations: A reasonable interpretation of his management consideration is that minimization of the number of constraints on fishermen is desirable. It becomes important, therefore, to look at the implications of the three allocation systems relative to the extent and complexity of management regulations.

The complexity of current regulations has effectively served to restrict the fishermen's freedom to decide where and when to fish. Under a system of annual individual vessel quotas a fisherman would be free to choose within the limits of his individual catch quota the most efficient and convenient times, places and methods for harvest.

This advantage, however, must be weighed against the inherent drawback of any direct catch allocation system: these systems (as opposed to effort allocation systems) remove a large degree of competition from the fishery. That is, they greatly reduce the ability of an individual fisherman to improve his performance relative to others in the fishery by eliminating the possibility of increasing his catch through improved fishing ability.

Inducement of Diversification in Harvesting Sector: Inducement of effort away from surf clam stocks and towards the less intensely utilized quahog stocks may come from several sources. Among these are relative prices and costs. Stability in prices, the extent of freedom of decision-making and flexibility in planning harvesting operations would appear to be additional factors contributing to induced diversification. Specifically, the more freedom the vessel operator has in choosing his own strategy for harvesting surf clam the greater would be the opportunities for becoming involved in the quahog fishery without being preempted from his historic share in the surf clam fishery. The individual vessel allocation system, by virtue of providing the greatest freedom in individual management of fishing efforts, appears to be more conducive to achieving species diversification than the vessel group allocation system with its auxilliary regulatory components. It should be recognized, however, that the sum of the surf clam and ocean quahog quotas is less than the demonstrated harvesting capacity of the surf clam fleet alone. It is

virtually certain, therefore, that the overall fleet would have to operate at less than full capacity regardless of the degree of effort withdrawn from the surf clam fishery to the quahog fishery. In other words, effort and/or catch restrictions will be necessary on either the surf clam fishery, the ocean quahog fishery, or both, regardless of the degree of diversification in the overall sea clam industry.

Management Costs (Including Enforcement): Any scheme which assigns property rights, as would the individual vessel allocations or stock certificate schemes, would be expensive to initially design, implement and monitor relative to a system of implementing an overall catch limitation with no explicit allocation mechanism. It can also be expected that the information, research and administration costs associated with the individual vessel quota system would be higher than under a system of vessel group allocations. This is a consequence of the need to monitor each individual vessel's catch. Periodic audits of vessel catches could, however, easily be developed using adequate computerized routines. These audits would employ the same catch data base that would be used for monitoring catches by vessel groups.

Under these systems, an individual vessel would cease fishing for surf clam once its annual allocation is reached. The implication is that closures are self-imposed by individual fishermen rather than determined by the activities of the entire fishing fleet. As a result the need for regulation of vessel catch rates would be nonexistent. This would substantially lower total management and enforcement costs relative to the current system of enforcing overall and group catch quotas, although NMFS enforcement costs may not decrease.

XII–4. Tradeoffs Between the Beneficial and Adverse Impacts of the Preferred Management Option

Introduction

There are a large number of possible combinations of the alternatives outlined above. The following measures were proposed in the public hearing draft of this Amendment:

1. The annual surf clam quota of 1.8 million bushels (approximately 30 million pounds of meats) would be continued unchanged as would be the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, Amendment #2 would revise the quarterly quotas for surf clams to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September. A fishing week of no more than four days, Monday through Thursday, will be continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the NMFS determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to start and stop fishing at uniform hours. A make-up day for bad weather would be permitted on the fishing day following the fishing day during which the bad weather condition existed. The make-up day provision would be in effect only during the months of December, January, February, and March.

2. Amendment #2 would continue the provisions of the original FMP regarding ocean quahogs except that the annual quota for ocean quahogs would be increased to 4.0 million bushels (approximately 40 million pounds of meats).

3. The prohibition on the entry of additional vessels into the surf clam fishery would be continued by Amendment #2. The moratorium would not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

4. The provision to close surf clam beds to fishing wherein over 60 percent of the clam are under 4.5 inches in length and less than 15 percent are over 5.5 inches in length is continued in Amendment #2. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

5. Dredge size and number are to be limited by Amendment #2 to such equipment on board and in use on the effective date of Amendment #2. A minimum size limit of 4.5 inches would be imposed, at least during 1980. The primary reason for these measures is to take into account the possible impacts of using 1980 as a base year for measuring harvesting sector performance upon which to base, at least in part, a possible future direct allocation system for the surf clam fishery. The dredge freeze was recommended by the Council's Surf Clam and Ocean Quahog Advisory Subpanel primarily to minimize changes from historical relative harvesting capacity during the base period. The surf clam size limit was recommended by the Subpanel in order to minimize the harvest of pre-recruit surf clams during the base period when there would be a great incentive to harvest the maximum volume of clams in order to improve harvesting performance. Council may amend the FMP by removing the moratorium on the entry of new vessels into the surf clam fishery and replacing it with some type of vessel allocation system beginning with calendar year 1981. In the event that such a system is instituted, and, to the extent that an allocation formula could be based on performance, 1980 would be the base period for at least a portion of such calculations.

6. The licensing provisions of the original FMP are continued in Amendment #2. The reporting requirements are continued with minor revisions.

7. The Council has been considering the recommendation of the New England Fishery Management Council that a special regime be established for the surf clam fishery in New England. There has been much discussion since the original FMP was developed relative to the New England surf clam fishery, whether it differed enough from the Mid-Atlantic fishery to warrant a separate regime, and if so, what form that separate regime should take. After much consideration, the Mid-Atlantic Council has developed an alternative for the management of the surf clam fishery in New England. The alternative provides for the establishment of a separate management regime in New England, that is, the area north of the dividing line between the Mid-Atlantic and New England Fishery Management Councils. In the northern area the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions would not be in effect. A quota of 200,000 pounds of surf clams would be set for that area. The New England quota would be in addition to the quota for approximately 30 million pounds of surf clams set in the amended FMP in the Mid-Atlantic. When half of that quota would be caught, the effort restrictions operating in the Mid-Atlantic area would be imposed. Any harvest of surf clams from the northern area would not be charged against the Mid-Atlantic surf clam quota. Vessels entering the New England fishery under this special provision would not be entitled to fish in the Mid-Atlantic area and would not accrue any rights to a future direct allocation system that

might be established. Vessels with permits issued pursuant to the moratorium established by the original Surf Clam and Ocean Quahog FMP would be permitted to fish in the northern area, but their landings would be reported separate from their Mid-Atlantic landings and would not count toward any possible future direct allocation system base calculation.

8. Another combination of management measures was proposed for consideration during the public review process for this amendment by the Council's Surf Clam and Ocean Quahog Advisory Subpanel. That alternative would extend the FMP to the end of 1981 with annual and quarterly quotas for surf clams and an annual quota for ocean quahogs identical to those in the Council's recommended alternative. Dredge size and number would be limited to that on board and in use as of January 1, 1980. The bad weather make-up day provisions are the same in the Subpanel's alternative as those in the Council's recommended alternative, except that the make-up day would be limited to one twelve hour period per week. The moratorium on entry of vessels into the surf clam fishery would also be extended.

Preferred Management Option

Based on a review of comments made at the public hearings and letters received during the review period, and on the recommendations of the Council's Surf Clam and Ocean Quahog Advisory Subpanel and Scientific and Statistical Committee, the Council has adopted the following measures for Amendment #2 to the Surf Clam and Ocean Quahog FMP:

1. Extend the FMP through calendar year 1981;

2. Establish two management areas for the surf clam fishery: The New England Area and the Mid-Atlantic Area. The dividing line between the areas would be the established dividing line between the New England and Mid-Atlantic Fishery Management Councils. The dividing line begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" latitude and 71°54'28.477" longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ (50 CFR 601.12(a), Federal Register, Vol. 42, No. 137, July 18, 1977, page 36980).

3. The following quantities (in millions of bushels) would apply annually:

For the Mid-Atlantic Area the surf clam OY, DAH, DAP and quota of 1.8 million bushels (approximately 30 million pounds of meats) are continued unchanged as are the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, the quarterly quotas for surf clams are revised to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September. While the DAP is shown separately in the above table for the New England and Mid-Atlantic Areas, the separate management areas do not apply to the processing sector.

4. A fishing week of no more than four days, Monday through Thursday, is continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the NMFS determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to stop fishing at 5 pm. The fishing week is changed from 12:01 am Monday–11:59 pm Thursday to 5 pm Sunday–5 pm Thursday. During the months of December, January, February, and March, a make-up day for bad weather is permitted on the fishing day following the fishing day lost due to bad weather. In the New England Area, there would be no effort restrictions until half of the 25,000 bushel quota is harvested, at which time the effort restrictions operating in the Mid-Atlantic Area would be imposed.

	Optimum yield (OY)	Domestic annual harvest (DAH)	Domestic annual processing (DAP)	Quota	TALFF
Surf Clams					
New England	0.025	0.025	0.025	0.025	0
Mid-Atlantic	1.800	1.800	1.800	1.800	0
Ocean Quahogs					
1980	3.500	3.500	3.500	3.500	0
1981	4.000	4.000	4.000	4.000	0

5. The provisions of the original FMP regarding ocean quahogs are continued unchanged except that the OY, DAH, DAP, and annual quota for ocean quahogs are increased as shown in the above table.

6. The prohibition on the entry of additional vessels into the surf clam fishery is continued in the Mid-Atlantic Area. The moratorium is lifted in the New England Area. Vessels with permits issued pursuant to the moratorium in both New England and the Mid-Atlantic may fish in both areas on both quotas. Vessels entering the fishery in New England that do not meet the moratorium conditions may not fish south of the dividing line. The moratorium does not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

7. The provision to close surf clam beds to fishing wherein over 60 percent of the clam are under 4.5 inches in length and less than 15 percent are over 5.5 inches in length is continued. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

8. The licensing provisions of the original FMP are continued. The reporting requirements are continued with minor revisions.

The final recommended regime adopted by the Mid-Atlantic Council for 1980–1981 differs from the recommended regime in the public hearing draft for Amendment #2 in several important ways. These revisions were made because of substantial public comment.

Base Year—Vessel Allocations

There was almost universal opposition to the concept of a direct vessel allocation system with allocations based at least in part on performance during a base year. Much of the opposition seemed to be directed toward utilizing data from a future base year, with concern relative to changes in actual harvesting patterns that would follow from the pressure on the fleet to maximize surf clam harvests during the base year. Given the fact that the proposed dredge freeze would not have taken effect until January 1, 1980, it was felt by persons commenting on the draft that massive changes in dredges would take place prior to that date, significantly altering historical shares in the surf clam fishery, to the detriment of those vessels that could not increase

dredge size or number prior to that date, either for technical or financial reasons. There was also concern that vessels which have transferred effort into the ocean quahog fishery would be required to return to the surf clam fishery to establish a base record, having the effect of accelerating the harvest of the surf clam quota and also substantially decreasing the supply of ocean quahogs at the very time that the ocean quahog fishery is beginning to develop.

The general recommendation from the public was to extend the moratorium on the entry of new vessels into the surf clam fishery (except in the New England area) for at least two years. This extension of the moratorium was objected to by several small surf clam processors who are concerned that their supply of surf clams could be cut off if the vessels that have traditionally been supplying them were to sell to other processors. The Council recognized this potential problem but, given the problems associated with the base year and the opposition to it, decided to extend the moratorium for two more years and attempt to find an acceptable replacement to the moratorium during that time. It must be recognized that the basic factors that led to the moratorium in the surf clam fishery as recommended in the original FMP have not changed. The quota remains the same. There are more vessels licensed for the fishery than were estimated to be in the fishery when the moratorium was originally proposed.

Given the problems associated with the establishment of a freeze on dredge size and number at a future time (i.e., the effective date of Amendment #2), and given the substantial public opposition to such a freeze, the Council decided to eliminate that measure in the final version of Amendment #2.

New England Management Area

There was no opposition to the alternative surf clam management regime for the New England Area. There was concern that, while the line proposed to separate the New England and Mid-Atlantic Areas in the hearing draft was acceptable for the surf clam fishery, it could create problems if it were used in the future in the ocean quahog or other fisheries. The Council decided that it would use the proposed line in the final version of Amendment #2, since it seemed appropriate for the surf clam fishery, with the understanding that it is not the Council's intent to use that line in any other fishery.

There was also concern about the proposed quota for the New England Area, since reported landings in Massachusetts alone from the FCZ in 1977 totalled 286,000 pounds of meats whereas the proposed quota for 1980 for all of New England was 200,000 pounds of meats. The Council, recognizing that biological data on the surf clam resource in the New England FCZ is extremely limited, decided to specify an MSY, OY, and quota for surf clams in the New England Area of 25,000 bushels for 1980 and 1981. This amount should provide an incentive to develop the New England fishery. If surf clams in amounts approaching the quota are actually harvested, it would provide evidence of a substantial stock of surf clams in the area and serve as the basis for a formal survey and stock assessment prior to the next updating of this FMP.

Revised Fishing Week

During the review period, the concept of ending all surf clam fishing at a uniform time was supported and 5 pm was supported as an ending time. However, since the original FMP specified a fishing week of 12:01 am Monday through 11:59 pm Thursday, it was necessary to revise the fishing week to permit vessels fishing for periods greater than 12 hours to fish on Monday. The Council resolved this issue by redefining the surf clam fishing week to be 5 pm Sunday through 5 pm Thursday.

Surf Clam Size Limit

The surf clam size limit (4.5') was proposed in the hearing draft of Amendment #2 primarily as part of the base year alternative. There was much support for a size limit in the hearing and review process as a conservation measure to decrease the probability of fishing in closed areas and to permit clams in other areas to grow to commercial sizes. Therefore, the Council proposed to keep the 4.5' minimum size limit in the final version of Amendment #2. The Council recognized that it is impossible to limit catches to only clams over 4.5' and also recognized the high mortality of discarded surf clams. Therefore, the Council proposed an allowance of 600 undersize clams per 32 bushel standard cage.

Ocean Quahog Quota

There was general support for the increase in the OY and quota for ocean quahogs. There was concern that the increase from the 3.0 million bushels in the original FMP to the 4.0 million bushels proposed in the draft of Amendment #2 might be too rapid, both because of the limited knowledge of the resource and because of possible effects on the overall market for clam products. Because of these factors and based on the recommendation of the Council's Surf Clam and Ocean Quahog Advisory Subpanel, the Council decided to increase the OY and quota for ocean quahogs to 3.5 million bushels in 1980 and 4.0 million bushels in 1981. Based on an informal survey of ocean quahog processors and comments made during the hearing and review process, the Council believes that the capacity and intent of US harvestors to harvest ocean quahogs and the capacity and intent of US processors to process ocean quahogs is at least equal to the OYs and quotas specified for 1980 and 1981. The Council is aware of the distribution of fishing effort relative to the distribution of the ocean quahog resource (see p. 40). However, it does not believe that this constitutes a problem, at this time, that necessitates the development of management measures that would distribute fishing effort.

XII–5. Specification of Optimum Yield

The Mid-Atlantic Fishery Management Council has determined that the annual optimum yield of surf clams should be 1.8 million bushels (approximately 30 million pounds of meats at 17 pounds of meats per bushel) for the Mid-Atlantic Area and 25,000 bushels for the New England Area. For ocean quahog and annual optimum yield for the entire area should be 3.5 million bushels in 1980 and 4.0 million bushels (35 and 40 million pounds of meats, respectively, at conversion factor of 10 pounds of meats per bushel). These optimum yields are subject to review and adjustment by the Council if the NMFS survey data analyzed after release of this plan indicates changes in OYs to be necessary. The capacity of US fishermen to harvest, and their intent to use that capacity, (i.e., DAH) for surf clams in the Mid-Atlantic Area is equal to the OY, as is the DAH for the New England Area. The capacity of US processors, and their intent to use that capacity (i.e., DAP) for ocean quahogs is equal to OY. Therefore, the TALFF is 0.

XIII. Measures, Requirements, Conditions, or Restrictions Specified To Attain Management Objectives

XIII–1. Permits and Fees

It is recommended that the permit requirements of the current Surf Clam and Ocean Quahog FMP continue and that permits currently issued remain in effect without reapplication, provided eligibility is established as provided below. Those requirements provide that a vessel owner or operator must obtain a permit in order to: conduct a directed fishery for surf clams or ocean quahogs

Table 47.—*MSY, OY, DAH, DAP, and TALFF*

[Millions of bushels]

Species	Maximum sustainable yield	Optimum yield	DAH	DAP	TALFF
Surf Clams					
New England	.025	.025	.025	.025	0
Mid-Atlantic	2.900	1.800	1.800	1.800	0
Ocean Quahogs					
1980	4.300	3.500	3.500	3.500	0
1981	4.300	4.000	4.000	4.000	0

within the FCZ or land or transfer to another vessel any surf clams or ocean quahogs or parts thereof caught within the FCZ. Two types of permits should be provided in the surf clam fishery: Type A permits issued pursuant to the initial moratorium, the eligibility criteria for which are described (as revised by Amendment #2) in the following paragraph; and Type B permits issued to vessels operating in the New England Area that do not meet the eligibility criteria for Type A permits. Vessels with Type A permits would be permitted to fish for surf clams in both the New England and Mid-Atlantic Management Areas. Vessels with Type B permits would be permitted to fish only in the New England Management Area.

A vessel would be eligible for a surf clam permit if it met any of the following criteria: the vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or the vessel was under construction for, or was being re-rigged for, use in the directed fishery for surf clams on November 17, 1977. "Under construction" means that the keel had been laid, and "being re-rigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams. Permits in the surf clam fishery may be granted to a vessel that is replacing a vessel which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person and have similar surf clam harvesting capacities.

Permit applications should be processed by the Regional Director of the Northeast Region of the NMFS. It is recommended that the application form require provision of the following information: Names, addresses, and telephone numbers of the owner and operator; the name of the vessel; the vessel's United States Coast Guard documentation number or State license number; engine and pump horsepower; home port of the vessel; directed fishery or fisheries; fish hold capacity (in "cages" or bushels), dredge size; amounts of surf clams and ocean quahogs landed in the past year (in bushels, if applicable); number of fishing trips in the past year; and date of beginning of construction or re-rigging (if applicable).

It is recommended that there be no fee for the initial permit but that a lost or multilated permit be replaced at a cost of $25. Any applicant denied a permit by the Regional Director should be allowed to appeal to the Assistant Administrator.

A permit should be valid only for the vessel for which it is issued. The permit should be carried, at all times, on board the vessel for which it is issued, and should be maintained in legible condition. The permit, the vessel, its gear and catch should be subject to inspection by any authorized official.

A permit should expire when the owner or operator retires the vessel from the fishery. Failure to land any surf clams from the FCZ for 52 consecutive weeks should constitute retirement from the fishery.

XIII-2. Catch Limitations

Foreign Fishing

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the US is prohibited.

Domestic Catch Quotas

Surf clams: It is recommended that the annual quota for surf clams equals the optimum yield. The New England Management Area annual quota is 25,000 bushels. The Mid-Atlantic Management Area annual quota is 1,800,000 bushels divided into quarterly quotas as follows:

	Bushels
January 1 to March 31	400,000
April 1 to June 30	500,000
July 1 to September 30	500,000
October 1 to December 31	400,000
Annual quota	1,800,000

In the Mid-Atlantic Management Area, if the actual catch of surf clams in any one quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director should add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director should subtract the amount of the excess from the next succeeding quarterly quota. The Assistant Administrator should publish a notice in the Federal Register whenever the Regional Director adjusts the quarterly quota.

In the New England Management Area, when half of the annual quota has been harvested, the Regional Director shall impose effort restrictions similar to those operating in the Mid-Atlantic Management Area. The Assistant Administrator should publish a notice in the Federal Register whenever the Regional Director adjusts allowable fishing effort.

Ocean Quahogs: The annual quota for ocean quahogs should equal the optimum yield which for 1980 is 3,500,000 bushels and for 1981 is 4,000,000 bushels. If necessary, the Regional Director may establish quarterly quotas for ocean quahog, and, in that event, the Assistant Administrator should publish notice of such quarterly quotas in the Federal Register.

Closure: If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information), that the quota for surf clams or ocean quahogs for any time period will be exceeded, the Assistant Administrator should publish a notice in the Federal Register stating the determination and, if necessary, stating a date and time for closure of the surf clam or ocean quahog fishery for the remainder of the time period. The Regional Director should send notice of the action, by certified mail, to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

XIII-3. Restrictions

It is recommended that no person should catch and retain on board any surf clams or ocean quahogs during closed seasons, in closed areas, or on days of the week in which fishing for these species is not permitted.

No person should catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

Presence of any part of a vessel's gear in the water later than one-half hour after the end of that vessel's authorized fishing period should be prima facie evidence that the operator of that vessel is fishing in violation of the FMP and its regulations.

Presence of surf clams or ocean quahogs aboard any permitted fishing vessel engaged in those fisheries and any part of the vessel's fishing gear in the water in closed areas should be prima facie evidence that such clams or quahogs were taken in violation of the provisions of the Act and the regulations. Presence of surf clams or ocean quahogs aboard any permitted fishing vessel engaged in those fisheries and any part of the vessel's fishing gear in the water more than 12 hours after a fishery closure announcement becomes effective should be prima facie evidence that such clams or quahogs were taken in violation of the provisions of the Act and the regulations.

Possession of surf clams, by any person aboard any fishing vessel engaged in the surf clam fishery, more than 12 hours after a weekly closure occurs should be prima facie evidence that such surf clams were taken in violation of the Act and the regulations.

No person should possess, have custody of or control of, ship, transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clam, ocean quahog, or part thereof, which were taken in violation of the Act or any regulations issued under the Act.

No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor or buyer should unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by the regulations.

No person should:

(1) Refuse to permit an authorized officer to board a fishing vessel subject to such a person's control for purposes of conducting any search, no matter where that vessel may be situated, in connection with the enforcement of the Act or any regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection;

(3) Resist a lawful arrest for any act prohibited by the regulations; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by the regulations.

Any person or vessel found to be in violation of these regulations, including the logbook and other reporting requirements, should be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act and pertinent regulations. It is recommended that the Secretary establish a specific list of penalties for specific civil violations of these regulations in order to expedite resolution of violations. This is recommended to assist in resolving what are apparently significant enforcement problems with the current FMP by providing appropriate penalties that are known in advance. It is recommended that the penalty for a first offense for any violation be a permit suspension for thirty days and that the penalty for a second offense be a permit suspension for ninety days. Subsequent offenses should carry penalties of a permit suspension combined with a fine. Appropriate fines should be specified for violations by processors.

XIII–4. Effort Restrictions

Surf Clams

Fishing for surf clams should be permitted only during the period beginning 5:00 PM Sunday and ending 5:00 PM Thursday and be conducted during this period only at the times and under the conditions authorized by the Regional Director.

Each quarter should begin with each vessel limited to 24 hours of fishing time to allow fishing for surf clams to be conducted throughout the entire quarter without exceeding the allocation for that quarter. Vessels should be required to start and stop fishing at uniform hours.

If the Regional Director determines during the quarter that the quarterly allocation will be (will not be) exceeded, he may reduce (increase) the number of hours per week during which fishing for surf clams is permitted to avoid prolonged vessel tieup times and fluctuations in the supply of surf clams which would result if the allocations were taken rapidly during the beginning of each quarter (facilitating the catch of the full quarterly allocation).

The Regional Director should publish a notice in the Federal Register of any reduction or increase in days per week during which fishing for surf clams is permitted. The reduction or increase should take effect immediately upon publication in the Federal Register. The Regional Director should also send notice of the change by certified mail to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

It is recommended that provision be made for an alternate fishing day in the event of unsafe weather conditions on a vessel's specified fishing day. A fisherman could only claim a weather day if small craft warnings were posted at the port from which the vessel operates, or the closest port thereto if warnings are not normally posted at the port from which the vessel operates, and if the fisherman notified the Coast Guard of his intent to claim a weather day within four hours of his official starting time for fishing and if he landed no clams on that day. The make-up day would be the next fishing day and would amount to the same number of hours as the fisherman would normally have on a fishing day. A fisherman would not be permitted to claim an additional make-up day if weather conditions prohibited fishing on a make-up day. This make-up day provision would be in effect only for the months of December, January, February, and March.

Ocean Quahogs

Fishing for ocean quahogs should be permitted seven days per week.

When 50 percent of the quota of ocean quahogs for any time period has been caught, the Regional Director should determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota probably will be exceeded, he may reduce the number of days per week during which fishing for ocean quahogs is permitted for the remainder of the time period.

The Assistant Administrator should publish a notice in the Federal Register of any reduction in days per week during which fishing for ocean quahogs is permitted. The reduction should be effective immediately upon publication in the Federal Register. The Regional Director should also send notice of any reduction by certified mail to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

XIII–5. Closed Areas

It should be unlawful to fish for surf clams or ocean quahogs in any designated closed surf clam or ocean quahog area. The following areas should be closed to fishing based on the request of the Environmental Protection Agency (see Section VI–2):

38°20'00"N—38°25'00"N and 74°10'00"W—74°20'00"W

38°40'00"N—39°00'00"N and 72°00'00"W—72°30'00"W

The Secretary may open these areas when the EPA notifies her that the pollution problems have been corrected and the area is safe for fishing.

Areas may be closed to surf clam and ocean quahog fishing upon a determination by the Regional Director (based on logbook entries, processors' reports, survey cruises, or other information) that the area contains surf clams of which 60 percent or more are smaller than 4.5 inches in size and not more than 15 percent are larger than 5.5 inches in size. Sizes should be measured at the longest dimension of the surf clam.

The Regional Director should publish notice of any closed area in the Federal Register. The Regional Director should send notice of the closed area, by certified mail, to each surf clam of ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator. Specific regulations should be developed for the reopening of each area closed to assure that overfishing does not occur in the area. The regulations should provide for the equitable allocation of the surf clam resource in the reopened area, should consider the impact of surf clams harvested in the reopened area on the rate of harvesting the overall surf clam quota, and should make the resource in the reopened area available to fishermen on an equitable basis. The projected harvest from the reopened area would be deducted from the overall quota. It is recommended that the NMFS, in consultation with the Mid-Atlantic Fishery Management Council, propose regulations for fishing in reopened areas and that public hearings be held on these regulations before they are implemented.

XIII–6. Vessel Moratorium

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, should remain in effect at least until December 31, 1981. The Mid-Atlantic Fishery Management Council desires to remove this moratorium as soon as practical, but believes that at least two additional years of the moratorium are necessary in order to prepare the necessary analyses and provide for adequate public review of any possible alternatives to the moratorium.

XIII–7. Vessel Identification

Each fishing vessel 25 feet in length or greater subject to these regulations should display its official number on both sides of the deckhouse or hull, and on an appropriate weather deck. Vessels under 25 feet in length do not need to display any number. The official number is that number issued by the U.S. Coast Guard associated with the documentation of the fishing vessel or the official number issued by a State or the U.S. Coast Guard for undocumented vessels.

Such markings should be at least eighteen (18) inches in height and be legibly painted in a contrasting color.

The operator of each vessel should keep the required markings clearly legible and in good repair and insure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft. Vessels licensed under state law should use the appropriate vessel identification markings established by that state.

XIII–8. Facilitation of Enforcement

The owner or operator of any vessel subject to these regulations should immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the vessel for the purpose of enforcing the Act and the regulations.

Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the vessel should be alert for signals conveying enforcement instructions. Standard signals and requirements should be developed and implemented by regulation.

XIII–9. Management Areas

It is recommended that two management areas be created in the surf clam fishery: the New England Management Area and the Mid-Atlantic Management Area. The dividing line between the areas would be the established dividing line between the New England and Mid-Atlantic Fishery Management Councils. The dividing line begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" latitude and 71°54'28.477" longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ (50 CFR 601.12(a), Federal Register, Vol. 42, No. 137, July 18, 1977, page 36980).

XIII–10. Habitat Preservation, Protection and Restoration

The Council is deeply concerned about the effects of marine pollution on fishery resources in the Mid-Atlantic Region. It is mindful of its responsibility under the Fishery Conservation and Management Act to take into account the impact of pollution on fish. The extremely substantial quantity of pollutants which are being introduced into the Atlantic Ocean poses a threat to the continued existence of a viable fishery. In the opinion of the Council, elimination of this threat at the earliest possible time is determined to be necessary and appropriate for the conservation and management of the fishery, and for the achievement of the other objectives of the Fishery Conservation and Management Act as well. The Council, therefore, urges and directs the Secretary to forthwith proceed to take all necessary measures, including but not limited to, the obtaining of judicial decrees in appropriate courts, to abate, without delay, marine pollution emanating from the following sources: (1) The ocean dumping of raw sewage sludge, dredge spoils, and chemical wastes; (2) the discharge of raw sewage into the Hudson River, the New York Harbor, and other areas of the Mid-Atlantic Region; (3) the discharge of primary treated sewage from ocean outfall lines; (4) overflows from combined sanitary and storm sewer systems; and (5) discharges of harmful wastes of any kind, industrial or domestic, into the Hudson River or surrounding marine and estuarine waters.

XIII–11. Development of Fishery Resources

No government action is needed at this time.

XIII–12. Management Costs and Revenues

Management costs should be essentially the same with Amendment #2 as with the original FMP except for the cost of enforcing the waiver of the moratorium in the surf clam fishery in the New England Area.

XIV. Specifications and Sources of Pertinent Fishery Data

XIV–1. General

The following are recommended in order for the Fishery Management Councils and the NMFS to acquire accurate data on the surf clam and ocean quahog catch, disposition of such catch, effort in the fishery, and importance of surf clams and ocean quahogs to fishermen relative to all other species caught. They are modifications of the requirements set forth in § 652.13 to implement the original Surf Clam/Ocean Quahog FMP. These data reporting requirements are necessary to manage the fishery for the maximum benefit of the United States. It is necessary that reporting be as comprehensive as possible. The following suggestions are designed to meet this need.

XIV–2. Reports and Records

Dealers

All persons who buy surf clams and ocean quahogs from vessels engaged in the surf clam or ocean quahog fishery should provide at least the following information to the Regional Director on a weekly basis on forms supplied by the Regional Director: dates of purchases; number of bushels purchased, by species; name and permit number of the vessel from which surf clams or ocean quahogs are landed or received; price per bushel, by species; mailing address of dealer or processing plant; and meat yield per bushel by species.

All persons required to submit reports under the above paragraph should also be required to submit at least the following information to the Regional Director on an annual basis on forms supplied by the Regional Director: Number of dealer or processing plant employees, by month; number of employees processing surf clam and ocean quahog, by species, by month; total payroll for surf clam and ocean quahog processing, by month; capacity to process surf clams and ocean quahogs, by species; and projected capacity to process surf clams quahogs, by species, for the following year.

All persons purchasing or receiving any surf clams or ocean quahogs at sea for transport to any port of the US should maintain and provide to the Regional Director records identical to those required under the above paragraphs.

Violations of these requirements should be subject to the penalties provided for in the FCMA.

Owners and Operators

The owner or operator of any vessel with a permit in the surf clam or ocean quahog fisheries should maintain on a daily basis on board the vessel an accurate log for each fishing trip, on forms supplied by the NMFS showing at least: Name and permit number of the vessel; total amount in bushels of each species taken; date(s) caught; time at sea; duration of fishing time; locality fished; crew size; crew share by percentage; landing port date sold; price per bushel; buyer; and size distribution of surf clams and ocean quahogs sold, by species, on a percentage basis.

The owner or operator should make the log available for inspection by an authorized official at any time during or after a trip.

The owner or operator should keep each logbook for one year after the date of the last entry in the log.

The owner or operator should submit copies of logbook forms weekly to the Regional Director.

All persons required to submit reports under the above paragraphs should submit annually to the Regional Director on forms supplied by the Regional Director at least the following information relating to vessel characteristics: name of the vessel, vessel's US Coast Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

The Assistant Administrator should revoke, modify, or suspend the permit of a vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section.

XV. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

SV–1. Fishery Management Plans

This amended Surf Clam and Ocean Quahog FMP is related to other FMPs and PMPs as follows:

1. It will amend the Surf Clam and Ocean Quahog FMP currently regulating fishing for surf clams and ocean quahogs within the FCZ.

2. All fisheries of the northwest Atlantic are part of the same general geophysical, biological, social, and economic setting. Domestic and foreign fishing fleets, fishermen, and gear often are active in more than a single fishery. Thus, regulations implemented to govern harvesting of one species or a group of related species may impact upon other fisheries by causing transfers of fishing effort.

3. Many fisheries of the northwest Atlantic result in significant non-target species fishing mortality. Therefore, each management FMP must consider the impact of non-target species fishing mortality on other stocks and as a result of other fisheries.

4. Present ongoing research programs often provide data on stock size, levels of recruitment, distribution, age, and growth for many species regulated by the PMPs, FMPs, and proposed FMPs.

XV–2. Treaties or International Agreements

No treaties or international agreements relate to this fishery.

SV–3. Federal Laws and Policies

The only Federal law that controls the fisheries covered by this FMP is the FCMA.

Marine Sanctuary and Other Special Management Systems

The USS Monitor Marine Sanctuary was officially established on January 30, 1975, under the Marine Protection, Research, and Sanctuaries Act of 1972. Rules and regulations have been issued for the Sanctuary (15 CFR Part 924). They prohibit deploying any equipment in the Sanctuary, fishing activities which involve "anchoring in any manner, stopping, remaining, or drifting without power at any time" (924.3(a)), and "trawling" (924.3(h)). The Sanctuary's position off the coast of North Carolina at 35°00'23" N latitude—75°24'32" W longitude is located in the FMP's designated management area. The Monitor Marine Sanctuary is clearly designated on all National Ocean Survey (NOS) charts by the caption "protected area". This minimizes the potential for damage to the Sanctuary by fishing operations.

Marine Mammals and Endangered Species

The provisions of this amended FMP should have no impact on marine mammals or endangered species, either through harvesting and processing operations for surf clams and ocean quahogs, or through the availability of surf clams and ocean quahogs as possible food items for endangered species.

Oil, Gas, Mineral, and Deep Water Port Development

While Outer Continental Shelf (OCS) development plans may involve areas overlapping those contemplated for offshore fishery management, we are unable to specify the relationship of both programs without site specific development information. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts include, from a fishery management position: (1) exclusion areas, (2) adverse impacts to sensitive, biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. We are not aware of pending deep water port plans which would directly impact offshore fishery management goals in the areas under consideration, nor are we aware of potential effects of FMPs upon future development of deep water port facilities.

XV–4. State, Local, and Other Applicable Laws and Policies

State laws regulating this fishery are discussed in Section VII–4 of the FMP. No other State or local laws are known to control the fisheries that are the subject of this FMP.

State Coastal Zone Management (CZM) Programs

The proposed action entails management of surf clam and ocean quahog stocks in an effort to ensure sustained productivity at some optimum level. In order to achieve this goal, all FMPs must incorporate means to achieve integrity of fish stocks, related food chains, and habitat necessary for this integrated biological system to function effectively. Inasmuch as CZM plans are presently in the developmental stages, we are not aware of specific measures on the part of the individual states which would ultimately impact this FMP. However, the CZM Act of 1972, as amended, is primarily protective in nature, and provides measures for ensuring stability of productive fishery habitat within the coastal zone. Therefore, each State's CZM plan will probably assimilate the ecological principles upon which this particular FMP is based. It is recognized that responsible long-range management of both coastal zones and fish stocks must involve mutually supportive goals. Thus, when details are forthcoming, specific state CZM plan elements related to fishery concerns will be evaluated for possible inclusion in future amendments of this FMP. States in the region with approved CZM Programs are Maine, Massachusetts, Rhode Island, part of New Jersey, Maryland, and North Carolina.

XVI. Council Review and Monitoring of the Plan

The Council will review the FMP each year.

Section 304(e) of the FCMA requires that the Secretary initiate and maintain a comprehensive program of fishery research to carry out the purposes, policies, and provisions of the Act. In order for the Council to monitor and predict biological and socioecomonic impacts of management decisions cited in this FMP, certain basic data must be provided on a continuing basis. Some of these data will be obtained through the recordkeeping provisions outlined in this FMP. However, much of the biological as well as socioeconomic information needed by the Council to address and resolve problems will not be available from those sources. Therefore, the Council recommends to the Secretary the following areas of research as being of high priority and requests that a comprehensive program of research be initiated or incorporated into ongoing research and survey efforts.

1. Biological Research and Monitoring

a. Assessments of distribution, density, population structure, and abundance of resources throughout their geographic ranges in the FCZ.

b. Estimation of year-class strengths and recruitment successes.

c. Determination of reproduction potential relative to clam sizes and densities.

d. Studies of the biology of ocean quahog, especially age at sexual maturity, natural mortality, yield per recruit, and estimation of MSY.

Suggested form of study/results: On-going studies with annual reports as appropriate.

2. Fishery Research and Monitoring

a. Evaluation of incidental mortalities caused by fishing relative to various gear, vessel, and fishing technique characteristics.

b. Determination of catch/effort by vessel, vessel tonnage, area fished, and gear characteristics.

Suggested form of study/results: One time study of a! Quarterly compilation of b with an annual report.

3. Processing Sector Research and Monitoring

a. Continuous monitoring of size frequencies of catch, costs and means of production, and wholesale and retail prices.

b. Examination of species and product diversity in production by plant.

Suggested form of study/results: Quarterly compilations and reports.

4. Environmental Research and Monitoring

a. Assessment of hydrographic influences on reproductive and recruitment success, and transport and setting success.

b. Estimation of impacts of ocean dumping, dredging, and other coastal activities on resources; prediction of probable impacts on resources from these operations in short and long-term.

Suggested form of study/results: One time study and report on a. On-going study and monitoring of b, with annual reports. Especially important is the capability for short-notice intense assessments on an emergency basis, to predict impacts of transient acute phenomena, e.g., anoxic conditions similar to those observed in summer, 1976.

5. Socioeconomic Research and Monitoring

a. Compilation of vessel earnings and profits, employment (fishery/industry) profiles.

b. Analysis of demographic characteristics of affected communities and industries.

c. Analysis of degrees of interaction between clam and other fisheries with regard to shifts (and ability to shift) in employment, opportunity costs, shifts in effort as functions of earnings, etc.

Suggested form of study/results: Quarterly compilation and yearly reports on a. One-time baseline studies and bi-annual (or as needed) updates on b and c.

6. Other

Assess potential of aquaculture to augment natural supply of the clam.

Suggested form of study/results: One time cost/benefit and feasibility study, review of state-of-the-art.

Research priorities are: 1a, 1b, 1d, 2b, 5a, 3a, 3b, 1c, 2a, 3b, 5c, 4a, 5b, 6b, and 7.

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All requests for background information, biological assessments, etc., should be directed to the offices of the Mid-Atlantic Fishery Management Council.

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Notices

Federal Register
Vol. 44, No. 232
Friday, November 30, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gila National Forest Grazing Advisory Board; Notice of Meeting

The Gila National Forest Grazing Advisory Board will meet at 10:00 A.M., December 18, 1979 in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, New Mexico.

The agenda for this meeting is:

1. Range Management Plans.
2. Program Planning for 1982 Range Betterment Funds.

The meeting will be open to the public.

Dated: November 14, 1979

Richard L. Jourden,

Acting Forest Supervisor.

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Rural Electrification Administration

Missouri Basin Power Project; Supplemental Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration in cooperation with the U.S. Army Corps of Engineers, Omaha District, has prepared a Supplemental Draft Environmental Impact Statement (SDEIS) in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, in connection with loan guarantees previously approved for Basin Electric Power Cooperative (Basin), 1717 East Interstate Avenue, Bismarck, North Dakota 58501, and Tri-State Generation and Transmission Association, Inc. (Tri-State), 12076 Grant Street, Thornton, Colorado 80241, for the cooperatives' share of the Missouri Basin Power Project (MBPP). Basin has a 42.27 percent undivided ownership share and Tri-State a 24.13 percent share of the MBPP. The MBPP consists of a three-unit 1500 MW steam generating station at Wheatland, Wyoming, associated transmission facilities, together with Grayrocks Dam and Reservoir. A Final Environmental Impact Statement (FEIS) for MBPP was issued by REA in May 1976.

This SDEIS was prepared as a result of a ruling by the U.S. District Court, District of Nebraska, that the May 1976 MBPP FEIS failed to fully satisfy certain provisions of NEPA and the Endangered Species Act.

REA was lead agency in the preparation of the SDEIS and the Omaha District Corps of Engineers was a cooperating Federal agency.

Additional information may be secured by request submitted to Mr. Joe S. Zoller, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20251. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and for Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved, and from the public.

Copies of the SDEIS are being sent to various Federal, State and local agencies as outlined in the Council of Environmental Quality Guidelines as well as all known recipients of the May 1976 FEIS. The SDEIS may be examined during regular business hours at: the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, SW., Washington, D.C., Room 5829, the offices of the Omaha District Corps of Engineers, 6014 U.S. Post Office and Courthouse, Omaha, Nebraska 68102; the offices of Basin Electric Power Cooperative; and the offices of Tri-State Generation and Transmission Association, Inc., at the address given above.

Comments concerning the environmental impact of the construction should be addressed to Mr. Zoller at the address given above for REA.

Comments must be received on or before January 14, 1980.

Dated at Washington, D.C., this 20th day of November 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-36601 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-15-M

U.S. DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Snow Survey and Water Supply Forecasting Program

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Prenotice of intent to study program.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rallison, Engineering Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, telephone 202-447-5889.

PRENOTICE: The U.S. Department of Agriculture, Soil Conservation Service (SCS), will make a study of the Snow Survey and Water Supply Forecasting Program during the period November 1, 1979, through August 30, 1980. The program provides agricultural water users and other water management groups in the Western States area with water supply forecasts to enable them to plan for efficient water management. The program also provides the public and the scientific community with a data base for accurately determining the extent of the snow resource. At present the program is operating in the States of Alaska, Arizona, California (east side of Sierra Nevada Mountain range only), Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The objective of the study is to identify or develop the program that best fits the requirement of providing effective service to agricultural water users and others while maintaining an appropriate level of Federal, State, and local funds and services. It is expected that program alternatives to be studied will range from continuation of the program as now operated, to a transfer of management and/or financing of the program activities to nonfederal institutions. Program alternatives will be proposed following a series of public meetings to be held in the 10 Western States and Alaska during the period November 30, 1979, to February 15, 1980.

These alternatives will be published in the Federal Register about May 1, 1980, at which time written comments will be solicited. Final selection is expected to be completed by October 1, 1980. Details regarding dates and locations of planned meetings, in the Western States, can be obtained by contacting the SCS State Conservationist for the concerned State. Information regarding this study can also be obtained by contacting Robert E. Rallison, Engineering Division, SCS. Phone 202–447–5889.

Dated: November 26, 1979.

Neil F. Bogner,

Director, Engineering Division.

[FR Doc. 79-36863 Filed 11-29-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended November 23, 1979, CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Nov. 20, 1979	37125	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act, and Subpart Q of the Board's Procedural Regulations, requests the Board for an amendment of its certificate of public convenience and necessity for Route 4 so as to authorize nonstop service between Orlando, Fla., and Los Angeles, Calif., by the deletion of that city pair from the list of restricted markets in Appendix A to American's certificate issued by Order 79-8-81, August 15, 1979. Conforming applications and answers are due December 4, 1979.
Nov. 20, 1979	37126	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act, and Subpart Q of the Board's Procedural Regulations, requests the Board for an amendment of its certificate of public convenience and necessity for Route 4 so as to authorize nonstop service between Miami, Fla., and Las Vegas, Nev., by the deletion of that city pair from the list of restricted markets in Appendix A to American's certificate issued by Order 79-8-81, August 15, 1979. Conforming applications and answers are due December 4, 1979.
Nov. 20, 1979	37127	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act, and Subpart Q of the Board's Procedural Regulations, requests the Board for an amendment of its certificate of public convenience and necessity for Route 4 so as to authorize nonstop service between Miami, Fla., and San Antonio, Tex., by the deletion of that city pair from the list of restricted markets in Appendix A to American's certificate issued by Order 79-8-81, August 15, 1979. Conforming applications and answers are due December 4, 1979.
Nov. 20, 1979	37128	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act, and Subpart Q of the Board's Procedural Regulations, requests the Board for an amendment of its certificate of public convenience and necessity for Route 4 so as to authorize nonstop service between Miami, Fla., and Phoenix, Ariz., by the deletion of that city pair from the list of restricted markets in Appendix A to American's certificate issued by Order 79-8-81, August 15, 1979. Conforming applications and answers are due December 4, 1979.
Nov. 23, 1979	37146	Western Air Lines, Inc., 6060 Avion Drive, Los Angeles, California 90045. Application of Western Air Lines, Inc. under Subpart Q of the Board's Procedural Regulations and pursuant to Section 401 of the Act requests an amendment of its certificate of public convenience and necessity for Route 19 so as to remove certain operating restrictions which, in turn, will permit Western to engage in nonstop air transportation between the following pairs of points: Denver, Colorado-Columbus, Ohio. Denver, Colorado-Dayton, Ohio. Conforming applications and answers are due December 7, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-36965 Filed 11-29-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-11-93; Docket No. 35499]

EF Institute; Granting Exemption Authority for Cultural Exchange (Netherlands)

AGENCY: Civil Aeronautics Board.

ACTION: Order 79-11-93 granting exemption authority to EF Institute for Cultural Exchange (Netherlands), Docket 35499.

SUMMARY: The Board is granting exemption authority to EF Talenreizen B.V. d/b/a EF Institute for Cultural Exchange, Inc. (Netherlands), a foreign charter operator, so it can organize and arrange Public Charters originating in the United States. The order also indicates that the Board will handle future tour operator applications by exemption rather than by show-cause procedures or oral evidentiary hearings, unless substantial factual issues are involved.

FOR FURTHER INFORMATION CONTACT: Dave Schaffer, Office of General Counsel, Civil Aeronautics Board, Washington, D.C. 20428 202–673–5442.

SUPPLEMENTARY INFORMATION: Foreign tour operators are currently subject to a much greater administrative burden than U.S. tour operators, who do not need to obtain any license at all. U.S. citizens have been granted a blanket exemption from section 401 of the Federal Aviation Act. Any U.S. citizen wishing to organize a charter is only required to submit a charter prospectus to the Board and to comply with Public Charter Regulation, 14 CFR Part 380. There is no prior fitness, public convenience and necessity or public interest judgement for U.S. citizens. Foreign tour operators, however, are required to obtain a section 402 permit as well as comply with Part 380. This involves considerable expense and delay and imposes a significant barrier to entry.

One justification for the disparity in regulatory treatment between U.S. and foreign tour operators was that the Board was powerless, before the Airline Deregulation Act of 1978, to grant

exemptions to foreign citizens. Now that that impediment has been removed, we see no reason why foreign tour operators should not receive authority by way of exemption, as do U.S. tour oprators. Of course, foreign tour operator applications will raise additional factual and legal issues concerning foreign policy, but these can also be resolved in the context of an exemption. We intend to issue a notice of proposed rulemaking in the near future proposing to grant a class exemption to foreign tour operators, as has been done for U.S. citizens. This notice will also propose appropriate screeing procedures to deal with foreign policy issues, as has been proposed for foreign air freight forwarders in EDR-378. Meanwhile, we see no reason why pending foreign tour operator applicants should be subjected to secton 402 hearing procedures, which probably would not be completed by the time that the final rule is issued. Therefore, we will deal with pending foreign tour operator applications on a case-by-case basis, and utilize our exemption power where there are no serious factual issues in dispute. Any authority granted by exemption will be interim in nature, and subject to reappraisal under the new rule. Therefore, individual exemptions will expire 90 days after a rule is adopted, and the foreign tour operators will be required to reapply for authority. A grant of interim exemption authority does not in any way prejudge the question of compliance with the new rule, which may involve different standards for obtaining authority.

By the Civil Aeronautics Board: November 15, 1979.

Phyllis T. Kaylor

Secretary.

[FR Doc. 79-36964 Filed 11-29-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Sturbridge, Inc., 1730 North Fifth Street, Philadelphia, Pennsylvania 19122, producer of men's and women's sweaters (accepted November 13, 1979); (2) Waverly Fashions, Inc., 247 West 37th Street, New York, New York 10018, producer of women's coat (accepted November 13, 1979); (3) Paul's Auto Ignition, Inc., 500 Saw Mill River Road, Yonkers, New York 10701, producer of stators for automobile alternators (accepted November 13, 1979); (4) Fleet Air Corporation, Ephrata, Pennsylvania 17522, producer of children's shoes (accepted November 13, 1979); (5) Fannin Coal Company, Inc., Box 80, Freeburn, Kentucky 41526, producer of coal (accepted November 13, 1979); (6) Recreational Electronics, Inc., 4111 West 47th Street, Chicago, Illinois 60632, producer of electronic resistors, rheostats, potentiometers, switches and circuits boards (accepted November 13, 1979); (7) A & L Novelty Company, Inc., 274 McKibben Street, Brooklyn, New York 11206, producer of stuffed toys (accepted November 14, 1979); (8) Cazenovia Greenhouse, 11 Chenango Street, Cazenovia, New York 120025, producer of cut flowers and bedding plants (accepted November 16, 1979); (9) Birnbaum Brothers, Inc., 41 East 11th Street, New York, New York 10003, producer of men's and women's coats and jackets (accepted November 19, 1979); (10) GBC Closed Circuit TV Corporation, 315 Hudson Street, New York, New York 10013, producer of TV cameras and monitors (accepted November 19, 1979); (11) Mica Products Corporation of America, Box 371, Wingdale, New York 12594, producer of desk tops and other furniture components (accepted November 20, 1979); (12) Marlene Sportswear Company, 330 6th Street, Brooklyn, New York 11232, producer of women's blouses (accepted November 20, 1979); (13) PRO Manufacturing Company, Inc., 34 South Main Street, Castle-on-Hudson, New York 12033, producer of speaker systems (accepted November 20, 1979); (14) A. G. Baba Company, 521 East Fourth Street, Bethlehem, Pennsylvania 18015, producer of women's blouses (accepted November 20, 1979); (15) Marvin Wernick Company, 1137 South Los Angeles Street, Los Angeles, California 90015, producer of jewelry and giftware (accepted November 20, 1979); and (16) Selva and Sons, Inc., 47-25 34th Street, Long Island City, New York 11101, producer of men's, women's and children's footwear (accepted November 21, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (P.L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitoning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division Office of Eligibility and Industry Studies.

[FR Doc. 79-36686 Filed 11-29-79; 8:45 am]

BILLING CODE 3510-24-M

National Telecommunications and Information Administration

Grant Appeals Board of the Public Telecommunications Facilities Program; Open Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: This document announces the forthcoming meeting of the Grant Appeals Board of the Public Telecommunications Facilities Program.

DATE: Thursday, December 13, 1979.

TIME: 10:00 a.m.

PLACE: National Telecommunications and Information Administration, Studio A, 7th Floor, 1800 G Street, NW., Washington, D.C. 20504.

PURPOSE: To consider the Petition for Reconsideration of Independent School District Number 89 of Oklahoma County, Oklahoma.

Additional information may be obtained from Robert M. Hunter, National Telecommunications and Information Administration, Office of Chief Counsel, Room 703, 1800 G Street, N.W., Washington, D.C. 20504. Telephone (202)377-1866.

Edward Zimmerman,

Deputy Administrator, National Telecommunications and Information Administration

[FR Doc. 79-37039 Filed 11-29-79; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List 1980 commodities and military resale commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 2, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodities, and service listed below from workshops for the blind and other severely handicapped.

It is proposed to add the following commodities, military resale commodities, and service to Procurement List 1980, November 27, 1979 (44 FR 67926):

Class 5440

Stepladders, Aluminum
5440–00–514–4483
5440–00–514–4485
5440–00–514–4487
(GSA Regions 5, 6)

Class 6230

Light, Desk, Fluorescent
6230–00–299–7771 (GSA Regions 1, 6, 8, 10)
6230–00–682–3423 (GSA Regions 1, 4, Shelby, OH Depot in Region 5, 6, 8, Honolulu, HI Depot in Region 9, 10)

Military Resale Item No. and Name

No. 502 Toilet Bowl Cleaner (Automatic Tank Dispenser)

SIC 7349

Janitorial Service, Bldgs. 180, 2546, U.S. Naval Air Station, Whidbey Island, Oak Harbor, Washington 98278.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-36903 Filed 11-29-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1980; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1980 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 30, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION:

On September 21, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (44 FR 54749) of proposed addition to Procurement List 1980, November 27, 1979 (44 FR 67926).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity is hereby added to Procurement List 1980:

Class 8465

Bag, Sleeping, Firefighter's (GSA Regions 1, 2, 3, 4, 5, 6, 7, 8)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-36902 Filed 11-29-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; New System of Records

AGENCY: Department of the Navy (U.S. Marine Corps).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Marine Corps proposes to add one new system of records subject to the Privacy Act of 1974.

DATES: The system shall be effective as proposed without further notice on December 31, 1979 unless comments are received on or before December 31, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Send comments to the systems manager identified in the particular record system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, DC 20380, telephone: 202–694–1122.

SUPPLEMENTARY INFORMATION; The Marine Corps' record systems notices as prescribed by the Privacy Act of 1974, Public Law 93–579 (5 U.S.C. 552a) have been published in the Federal Register as follows:

FR Doc 77–28255 (42 FR 51117) September 28, 1977
FR Doc 77–31445 (42 FR 56978) October 31, 1977
FR Doc 78–3002 (43 FR 5472) February 8, 1978
FR Doc 78–21010 (43 FR 33878) August 1, 1978
FR Doc 79–28470 (44 FR 53284) September 13, 1979
FR Doc 79–32634 (44 FR 61081) October 23, 1979

The United States Marine Corps has submitted a new system report dated October 26, 1979, for this new record system under the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of a new system report and in accordance with Office of Management and Budget (OMB) Circular A–108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of records under the Privacy Act of 1974. This OMB guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

November 23, 1979.

MMN00044

SYSTEM NAME:

Equal Opportunity Information and Support System.

SYSTEM LOCATION:

Commandant of the Marine Corps (Code MPH), Headquarters, U.S. Marine Corps, Washington, D.C. 20380 and all Marine Corps activities. See organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps military personnel who submit complaints of discrimination and Marine Corps military personnel who are under formal or informal investigation as a result of complaints of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records compiled pursuant to the processing of a complaint concerning discrimination, incident data, endorsements and recommendations, formal and informal investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e–16 (b) and (c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Officials and employees of the U.S. Marine Corps in the performance of their official duties related to equal opportunity matters.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Officials and employees of other components of the Department of Defense in the performance of their official duties related to equal opportunity matters.

Officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to equal opportunity matters.

The Senate or the House of Representatives of the United States or any committee or subcommittee thereof, any joint committee of Congress or any subcommittee of joint committees on matters within their jurisdiction requiring disclosure of the files or records of Marine Corps military personnel. When required by Federal Statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and file folders.

RETRIEVABILITY:

Files are retrieved by name and/or by subject matter of incident.

SAFEGUARDS:

Files are stored in filing cabinets. After normal working hours, rooms are locked. Building is located in controlled access area with security guards on 24 hour duty. Access to files is limited to officials and employees of Headquarters, U.S. Marine Corps acting in their official capacity on a need-to-know basis. Files held by field activities are maintained in areas accessible only to authorized personnel that are properly trained.

RETENTION AND DISPOSAL:

Records disposed of two years after administrative closing of the case.

SYSTEM MANAGERS(S) AND ADDRESS:

Commandant of the Marine Corps (Code MPH), Attn: Equal Opportunity Officer, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone 202–694–2895.

NOTIFICATION PROCEDURES:

Correspondence pertaining to files maintained should be addressed to:

Commandant of the Marine Corps (Code MPH).
Headquarters, U.S. Marine Corps.
Washington, D.C. 20380.

Written request for information should contain the individual's name, social security number and signature.

Personal visits may be made to Headquarters, U.S. Marine Corps (Code MPH), Columbia Pike and Arlington Ridge Road, Arlington, Virginia 20380. Individuals should be able to provide personal identification to include valid military identification or two valid civilian items of identification such as driver's license, passport, credit cards, etc.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual are contained in SECNAVINST 5211.5A and 32 C.F.R. section 701.1 et seq. Additional information may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other systems, investigations, witnesses and correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt from 5 U.S.C. 552a(K) (2), (4) through (7), as applicable. For additional information, contact the System Manager.

[FR Doc. 79-38297 Filed 11-29-79; 8:45 am]
BILLING CODE 3810-71-M

Navy Department

Privacy Act of 1974; New System of Records

AGENCY: Department of the Navy (DON).

ACTION: Notice of a new system of records.

SUMMARY: The Navy is adding a new system of records to its inventory of record systems subject to the the Privacy Act of 1974. The Act requires that any proposed new record system shall be published in advance for public review and comment.

DATES: This new record system shall be effective as proposed without further notice on December 31, 1979, unless comments are received on or before December 31, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Send comments to the systems manager identified in the particular record system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B1P), Department of the Navy, the Pentagon, Washington, DC 20350, telephone 202–694–2004.

SUPPLEMENTARY INFORMATION: The Navy systems of records notices as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a (Pub. L. 93–579) have been published in the Federal Register as follows:

FR Doc 77–28255 (42 FR 51229) September 28, 1977
FR Doc 78–23953 (43 FR 42379) September 20, 1978
FR Doc 78–32596 (43 FR 54124) November 20, 1978
FR Doc 79–20457 (44 FR 38961) July 3, 1979
FR Doc 79–24619 (44 FR 46912) August 9, 1979
FR Doc 79–27188 (44 FR 50884) August 30, 1979
FR Doc 79–29285 (44 FR 54750) September 21, 1979
FR Doc 79–30035 (44 FR 55623) September 27, 1979
FR Doc 79–30744 (44 FR 57146) October 4, 1979
FR Doc 79–36400 (44 FR 67703) November 27, 1979

The Navy has submitted a new system report dated October 25, 1979, for this new system report and in accordance with Office of Management and Budget (OMB) Circular A–108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of records under the Privacy Act of 1974. This OMB

guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

November 23, 1979.

N00013

SYSTEM NAME:

Automated Claims Information System (ACIS)

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Federal Tort Claims Act, the Foreign Claims Act, Military Claims Act, the 'Nonscope' Claims Act, Legislative Reorganization Act, or Military and Civilian Employees' Claims Act. All individuals who have filed claims with the U.S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U.S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 712. All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States. All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct. All common carriers against whom recovery has been sought by the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, office processing the claim, dollar amount of claim, dollar amount paid, type of claim, type of property damage, type of personal injury, date of incident that caused the claim, date the claim was presented to the Navy, date payment was made or claim was closed, amount claimed against individual, amount received from individual, location of incident, and government bill of lading (if applicable).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680); 32 CFR 750.30–750.49; Medical Care Recovery Act (42 U.S.C. 2651–53); Federal Claims Collection Act (31 U.S.C. 951–53); 32 CFR 757.1–757.21; Foreign Claims Act (10 U.S.C. 2734); 32 CFR 753.1–753.29; Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50–750.59; 'Nonscope' Claims Act (10 U.S.C. 2737); 32 CFR 750.60–750.69; Military and Civilian Employees Claims Act (31 U.S.C. 240–243); 32 CFR 751.0–751.3; Legislative Reorganization Act (10 U.S.C. 1552); Admiralty Claims Act (10 U.S.C. 7622); 39 U.S.C. 712; 5 U.S.C. 30; 5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The officials and employees of the Department of the Navy in the performance of their official duties related to monitoring the current status of the Navy claims program. The officials and employees of the Military Traffic Management Command in the performance of their official duties related to the management of the Department of Defense personal property movement and storage program. The system will be used to report contingent liability to the Government Accounting Office to satisfy requirements of the GAO Policy and Procedures Manual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy forms.

RETRIEVABILITY:

ACIS users obtain information by means of either a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name or social security number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for three years after the close of the individual's claim. The record will be transfered to magnetic tape after three years and will be utilized in a batch processing mode. After ten years, the record will be erased from the tape.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Claims Defense Program, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information should be obtained from the System Manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from offices processing claims.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-36798 Filed 11-29-79; 8:45 am]
BILLING CODE 3810-71-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Public Utility Regulatory Policies Act; Order on Rate Standards

AGENCY: Bonneville Power Administration (BPA).

ACTION: Order Respecting Rate Standard Under Section 111 of the Public Utility Regulatory Policies Act.

SUMMARY: By Federal Register Notice of June 19, 1979 (44 FR 35285) Bonneville Power Administration (BPA) announced that it would hold hearings on July 19, 1979 to consider and determine whether or not it is appropriate to implement standards for ratemaking concerning cost of service, declining block rates, time of day rates, seasonal rates, interruptible rates and load management techniques for any person, state agency or Federal agency to which electric energy is sold by BPA. The standards

are set forth in Section 111(d) of the Public Utility Regulatory Policies Act (PURPA, Pub. L. 95–617). Written comments were received until August 20, 1979. The hearings were duly held, testimony, exhibits and written comments were received and recommendations were made by the hearing officer to the Administrator. By the attached Order, BPA's Administrator adopts the ratemaking standards as modified.

The Order was effective on November 19, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, (503) 234–3361 extension 4261.

SUPPLEMENTARY INFORMATION: Copies of the hearing officer's report are available upon request at the above address.

Dated: November 26, 1979.

Sterling Munro,

Administrator.

Determination Order by Bonneville Power Administration on Public Utility Regulatory Policies Act Ratemaking Standards

Whereas the Congress of the United States enacted the Public Utility Regulatory Policies Act of 1978 (PURPA), which pertains to Bonneville Power Administration (Bonneville) as an electrc utility which sells electric energy;

And whereas Section 111 of PURPA required Bonneville to hold a hearing about certain ratemaking standards and to make a determination concerning the applicability to Bonneville electric power rate structures of those standards;

And whereas, upon due notice, Bonneville on July 19, 1979, held hearings in due form before Robert L. Jones, the duly designated hearing officer, and heard testimony and took evidence concerning the ratemaking standards;

And whereas the hearing officer has filed with the Administrator of Bonneville a Summary of Record, Report, and Recommendations of Hearing Officer Regarding PURPA Section 111 Standards and has filed also the complete record of the hearings and evidence;

And whereas Bonneville has considered the record and evidence of said hearings and has considered the Summary of Record, Report, and Recommendations of the hearing officer;

And whereas Bonneville has considered each and all of the standards of Section 111(d) of PURPA and the appropriate applicability thereof to Bonneville and its rates, as disclosed by the evidence of the hearings,

And whereas Bonneville hereby adopts the findings and recommendations of the Summary of Record, Report, and Recommendations of Hearing Officer regarding PURPA Section 111 Standards,

Now, therefore, Bonneville hereby orders that, until further consideration and determination, for the reasons set forth in the Hearing Officer's Report and Recommendation, the following standards are hereby adopted for all Bonneville rates for all classes and types of customers, to wit:

(1) Cost of service—Rates charged by Bonneville for providing electric service to each class of its customers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class. The costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of reasonable, accepted accounting methods. Such methods shall to the extent practicable permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and permit identification of differences in cost-incurrence attributable to differences in customer demand, and energy components of cost. In prescribing such methods, Bonneville will use embedded and long-run incremental costs. The rate design will always consider such an embedded cost-of-service analysis but will also consider other factors, such as marginal or long-run incremental cost principles, the purposes of conservation, efficient use of resources, and equity, and the need to meet legal considerations.

(2) Declining block rates—The energy component of a rate, or the amount attributable to the energy component in a rate, charged by Bonneville for providing electric service during any period to any class of its customers may not decrease as kilowatt-hour consumption by such class increases during such period, except to the extent that the costs to Bonneville of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period.

(3) Time-of-day rates—The rates charged by Bonneville for providing electric service to each class of its customers shall be on a time-of-day basis insofar as such rates practically can reflect the costs of providing electric service to such class of customers at different times of the day unless such rates are not cost-effective with respect to such class. A time-of-day rate is cost-effective with respect to a class of customers if the long-run benefits of such rate to Bonneville and its electric customers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates.

(4) Seasonal rates—The rates charged by Bonneville for providing electric service to each class of its customers shall be on a seasonal basis insofar as such a rate reflects the costs of providing service to such class of customers at different seasons of the year to the extent that such costs vary seasonally for Bonneville.

(5) Interruptible rates—Bonneville shall offer an interruptible rate to its direct service industrial customers which reflects the cost of providing interruptible service.

(6) Load management techniques—Bonneville shall offer to its electric customers such load management techniques as it determines will be practicable and cost-effective, be reliable, and provide useful energy or capacity management advantages to Bonneville. A load management technique shall be deemed to be cost-effective if such technique is likely to reduce maximum kilowatt demand on Bonneville, and the long-run cost-savings to Bonneville of such reduction are likely to exceed the long-run costs to Bonneville associated with implementation of such technique.

It is further ordered that these standards be implemented by Bonneville for its rate-setting at the earliest practicable time and, in any event, for all rates intended to become effective in 1980 and thereafter.

It is further ordered that no attorney fees nor witness fees shall be paid to any party or participant under Section 122 of PURPA.

Dated this 19th day of November, 1979.

Sterling Munro,

Administrator, Bonneville Power Administration.

[FR Doc. 79-37078 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 79-Cert-107]

Cement Asbestos Products Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on October 18, 1979, Cement Asbestos Products Company (CAPCO), 1400 20th St., South, P.O. Box 3435, Birmingham, Alabama 35205 filed an application for certification of an eligible use of natural gas to displace fuel oil at its production facility in Ragland, Alabama pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126–A, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m.–4:30 p.m. Monday through Friday, except Federal Holidays.

In its application, CAPCO states that the volume of natural gas for which it requests certification is up to 575 Mcf per day, which is estimated to displace an average use of 2950 gallons of No. 2 fuel oil (.12% sulfur) at CAPCO's Ragland facility per day.

The eligible seller is Alabama Gas Corporation, 1918 First Avenue North, Birmingham, Alabama. The gas will be transported by the Southern Natural Gas Company, P.O. Box 26563, Birmingham, Alabama 35202.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory

Administration, Room 4126–A, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before December 10, 1979.

An opportunity to make an oral presentation of data, views, and arguments whether against or in support of this application may be requested by any interested person in writing on or before December 10, 1979. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group of class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to CAPCO and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on November 27, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-37077 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-099]

Kaiser Aluminum & Chemical Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on October 1, 1979, Kaiser Aluminum and Chemical Corporation (Kaiser), 300 Lakeside Drive, Oakland, California 94643, filed an application for certification of an eligible use of natural gas to displace fuel oil at its Mexico, Missouri plant pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126–A, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m.–4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Kaiser states that the volume of natural gas for which it requests certification is up to 1,570,000 Mcf per year which is estimated to displace the use of approximately 11,171,153 gallons of No. 2 fuel oil (0.5% max. sulfur) at the Mexico, Missouri plant for the period from November 1, 1979, to October 31, 1980.

The eligible seller is Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201. The gas will be transported by the Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77001 and the Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126–A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before December 10, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing on or before December 10, 1979. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Kaiser and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on November 27, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-37078 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

Edwards Producing Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Edwards Producing Company, Inc., 1755 Lelia Drive, Suite 301, Jackson, Mississippi 39216, on November 1, 1979. An earlier PRO issued to Edwards on September 6, 1979, was rescinded on September 26, 1979, due to an omission of appropriate language with respect to distribution of refunded overcharges. The November 1, 1979, PRO charges Edwards Producing Company, Inc. with pricing violations in the amount of $125,567.47 connnected with the sale of crude oil during the period September 1, 1973, through December 31, 1977, in the State of Mississippi.

A copy of the November 1, 1979, PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, NE., Atlanta, Georgia 30309, Phone: (404) 881–2661. On or before December 17, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Ga, on the 5th day of November, 1979.

James C. Easterday,

District Manager.

[FR Doc. 79-36825 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

R. Lacy, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: November 19, 1979. Comments by: December 31, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone 214/749–7626.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Office of Enforcement of the ERA executed a Consent Order with R. Lacy, Inc. of Longview, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and R. Lacy, Inc. wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the Doe has determined that it is in the public interest to make the Consent Order with R. Lacy, Inc. effective as of the date of its execution by the DOE and R. Lacy, Inc.

I. Consent Order

R. Lacy, Inc. with its home office in Longview, Texas is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Part 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and R. Lacy, Inc. entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by R. Lacy, Inc. This Consent Order settles those matters relative to R. Lacy, Inc.'s production and sale of crude during the period September 1, 1973 through December 31, 1977.

The significant terms of the Consent Order with R. Lacy, Inc. are as follows:

1. R. Lacy, Inc. allegedly misapplied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR 150.353 when determining the prices to be charged for certain domestic crude oil.

2. R. Lacy, Inc. understands and agrees to refund $20,000.00 to the DOE by certified check. This amount is in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of the specified transactions for the following properties:

M. H. Cox
Rappe
G. Maberry
J. G. Shamburger

3. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in 2. above will be made in one payment of $20,000.00. Delivery of such payment shall be to the Assistant Administrator for Enforcement, Economic, Regulatory Administration, in the form of a certified check made payable to the United States Department of Energy.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "person" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchases or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected person, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on the R. Lacy, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on or before December 31, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 19th day of November 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-36824 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-3894, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co.; Petition To Amend Orders Issuing Certificate of Public Convenience and Necessity

November 23, 1979.

On February 6, 1979, a petition was filed by Atlantic Richfield Company (Applicant) requesting that the Commission amend its orders issuing Certificates of Public Convenience and Necessity, by substituting "ARCO Oil and Gas Company, Division of Atlantic Richfield Company", for Atlantic Richfield Company, and to redesignate the related rate schedules, all as more fully set forth in the Appendix hereto. Applicant also request to be substituted for Altantic Richfield Company in all certificate and abandonment proceedings pending before the Commission.

Effective January 2, 1979, Atlantic Richfield Company implemented an organizational restructure. New operating divisions have been formed which are organizationally separate from each other.

One of such divisions is ARCO Oil and Gas Company, Division of Atlantic Richfield Company, which has the responsibility for natural gas operations and all filings before the Commission relative thereto.

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 Procedures, a hearing will be held without further notice before the Commission 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 necessary. If a petition for leave to intervene is timely filed, or if the Commission on its on motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Any person desiring to be heard or to make any protest with reference to said application, on or before December 17, 1979, should filed 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.

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.

Appendix

RS No.	Purchaser	Certificate docket
2	Mississippi River Transmission Corp	G-3894
3	Tennessee Gas Pipeline Company	G-3894
4	Tennessee Gas Pipeline Company	G-3894
5	Tennessee Gas Pipeline Company	G-3894
6	Tennessee Gas Pipeline Company	G-3894
7	Tennessee Gas Pipeline Company	G-3894
9	Northern Natural Gas Company	G-3894
11	El Paso Natural Gas Company	G-3894
12	El Paso Natural Gas Company	G-3894
13	El Paso Natural Gas Company	G-3894
15	El Paso Natural Gas Company	G-3894
17	El Paso Natural Gas Company	G-3894
18	El Paso Natural Gas Company	G-3894
19	El Paso Natural Gas Company	G-3894
20	El Paso Natural Gas Company	G-3894
22	El Paso Natural Gas Company	G-3894
26	El Paso Natural Gas Company	G-3894
28	El Paso Natural Gas Company	G-3894
29	El Paso Natural Gas Company	G-3894
34	Texas Eastern Transmission Corp	G-3894
36	Texas Eastern Transmission Corp	G-3894
37	Texas Eastern Transmission Corp	G-3894
39	Natural Gas Pipeline Co. of America	G-3894
40	Natural Gas Pipeline Co. of America	G-3894
41	Transcontinental Gas Pipe Line Corp	G-3894
42	Transcontinental Gas Pipe Line Corp	G-3894
44	United Gas Pipe Line Co	G-3894
45	United Gas Pipe Line Co	G-3894
46	United Gas Pipe Line Co	G-3894
47	United Gas Pipe Line Co	G-3894
48	United Gas Pipe Line Co	G-3894
49	United Gas Pipe Line Co	G-3894
51	Cities Service Gas Co	G-3894
53	Arkansas Louisiana Gas Co	G-3894
54	Arkansas Louisiana Gas Co	G-3894
55	Texas Gas Transmission Corp	G-3894
56	Mid Louisiana Gas Co	G-3894
57	Texas Gas Transmission Corp	G-3894
59	United Gas Pipe Line Co	G-3894
62	El Paso Natural Gas Co	G-3894 & G-12564
63	Columbia Gas Transmission Corp	G-3765
64	Arkansas Louisiana Gas Co	G-4690
124	Tennessee Gas Pipeline Co	G-9325
125	Tennessee Gas Pipeline Co	G-9366
127	Cities Service Gas Co	G-9393
132	El Paso Natural Gas Co	G-9754
133	Natural Gas Pipeline Co of America	G-9980
139	El Paso Natural Gas Co	G-10306
140	El Paso Natural Gas Co	G-10318
141	Texas Eastern Transmission Corp	G-10354
142	Texas Eastern Transmission Corp	G-10354
147	Transcontinental Gas Pipe Line Corp	G-10354
148	Tennessee Gas Pipeline Co	G-10354
149	Northern Natural Gas Co	G-10354
150	Transcontinental Gas Pipe Line Corp	G-10354
155	Texas Gas Transmission Corp	G-8809 & G-11685
158	Tennessee Gas Pipeline Co	G-10143
159	Natural Gas Pipeline Co. of America	G-10715
160	Texas Eastern Transmission Corp	G-10739
161	Texas Eastern Transmission Corp	G-10970
163	Cities Service Gas Co	G-11028
166	Columbia Gas Transmission Corp	G-11904
167	Arkansa Louisiana Gas Co	G-11905
168	El Paso Natural Gas Co	G-12164
169	Cities Service Gas Co	G-12318
170	Colorado Interstate Gas Co	G-12358

Appendix—Continued

RS No.	Purchaser	Certificate docket
171	United Gas Pipe Line Co	G—12484
173	Colorado Interstate Gas Co	G—12988
174	Northern Natural Gas Co	G-13098
175	Northern Natural Gas Co	G-13126
178	Northwest Pipeline Corp	G-13635
179	Nortnwest Pipeline Corp	G-13673
180	Northwest Pipeline Corp	G-13674
181	Texas Eastern Transmission Corp	G-13975
182	Phillips Petroleum Co	G-14402
183	Northern Natural Gas Co	G-14852
185	Tennessee Gas Pipeline Co	G-11034
186	United Gas Pipe Line Co	G-15231
188	Texas Gas Transmission Corp	G-15541
191	Northern Natural Gas Co	G-17179
192	El Paso Natural Gas Co	G-17809
193	El Paso Natural Gas Co	G-17771
195	Transcontinential Gas Pipe Line Corp	G-18070
196	Northern Natural Gas Co	G-18288
197	United Gas Pipe Line Co	G-18399
198	Florida Gas Transmission Co	G-10369
200	Florida Gas Transmission Co	G-11186
201	Florida Gas Transmission Co	G-10086
202	United Gas Pipe Line Co	G-18572
203	Michigan Wisconsin Pipe Line Co	G-18708
204	United Gas Pipe Line Co	G-18804
205	Kansas Nebraska Natural Gas Co	G-18859
206	El Paso Natural Gas Co	G-17571
207	Northern Natural Gas Co	G-19680
208	El Paso Natural Gas Co	G-19509
211	Southern Natural Gas Co	CI60-264
214	Tennessee Gas Pipeline Co	CI60-426
215	Tennessee Gas Pipeline Co	CI60-459
216	Northern Natural Gas Co	CI60-511
219	Transwestern Pipeline Co	CI61-291
221	Texas Gas Transmission Corp	CI61-660
222	Texas Gas Transmission Corp	CI61-652
224	Natural Gas Pipeline Co. of America	CI61-482
225	Michigan Wisconsin Pipe Line Co	CI61-752
226	Michigan Wisconsin Pipe Line Co	CI61-954
227	Texas Gas Transmission Corp	CI61-1245
228	Arkansas Louisiana Gas Co	CI61-1284
229	West Texas Gathering Co	CI61-1351
230	Tennessee Gas Pipeline Co	G-20020
231	Texas Gas Transmission Corp	CI61-1439
232	Transwestern Pipeline Co	CI61-1434
234	Northern Natural Gas Co	CI62-105
235	Tennessee Gas Pipeline Co	CI62-146
237	Transcontinental Gas Pipe Line Corp	CI62-363
238	Trunkline Gas Co	CI62-416
239	Trunkline Gas Co	CI62-435
240	El Paso Natural Gas Co	G-3217
241	Transcontinental Gas Pipe Line Corp	G-3287
242	Natural Gas Pipeline Co. of America	G-3287
243	El Paso Natural Gas Co	G-3281
244	Texas Eastern Transmission Corp	G-3284
245	El Paso Natural Gas Co	G-3289
246	Natural Gas Pipeline Co. of America	G-3280
247	Natural Gas Pipeline Co. of America	G-3219
248	Northern Natural Gas Co	G-3264
249	El Paso Natural Gas Co	G-3762
251	El Paso Natural Gas Co	G-3874
252	Montana Dakota Utilities Co	G-3873
253	Northwest Pipeline Corp	G-10233
255	Northern Natural Gas Co	G-17059 & G-11564
257	Texas Gas Transmission Corp	G-16151
258	United Gas Pipe Line Co	G-17411
260	Tennessee Gas Pipeline Co	G-19138
261	Columbia Gas Transmission Corp	CI62-1276
262	West Texas Gathering Co	CI62-1287
263	Panhandle Eastern Pipe Line Co	CI62-1497
264	Panhandle Eastern Pipe Line Co	CI62-1511
265	Northern Natural Gas Co	CI62-1331
266	Arkansas Louisiana Gas Co	CI63-638
267	Cities Service Gas Co	CI63-819
268	Texas Eastern Transmission Corp	CI63-890
272	Arkansas Louisiana Gas Co	CI63-1437
273	Panhandle Eastern Pipe Line Co	CI63-1490
274	Panhandle Eastern Pipe Line Co	CI63-1491
275	El Paso Natural Gas Co	CI63-1496
276	Northern Natural Gas Co	CI64-21
277	Montana Dakota Utilities Co	CI63-576
279	Southern Union Gathering Co	CI64-207
280	Natural Gas Pipeline Co. of America	CI64-206
281	El Paso Natural Gas Co	G-3894
283	South Texas Natural Gas Gathering Co	CI64-837
284	Michigan Wisconsin Pipe Line Co	CI64-781
285	Northern Natural Gas Co	CI64-947
286	Northern Natural Gas Co	CI64-1509
288	Northern Natural Gas Co	CI65-241
289	El Paso Natural Gas Co	CI65-360

Appendix—Continued

RS No.	Purchaser	Certificate docket
290	Northern Natural Gas Co	CI65-453
291	Montana Dakota Utilities Co	G-3996
293	El Paso Natural Gas Co	CI65-571
296	Natural Gas Pipeline Co. of America	CI65-513
299	Northern Natural Gas Co	CI66-795
300	El Paso Natural Gas Co	CI66-809
301	El Paso Natural Gas Co	CI66-823
302	Trunkline Gas Co	CI66-1259
303	Tennessee Gas Pipeline Co	G-3699
304	Panhandle Eastern Pipe Line Co	CI66-1290
305	El Paso Natural Gas Co	CI66-998
306	El Paso Natural Gas Co	CI67-140
307	Panhandle Eastern Pipe Line Co	CI67-322
308	Panhandle Eastern Pipe Line Co	CI67-845
309	United Gas Pipe Line Co	CI67-1708
310	Northern Natural Gas Co	CI67-1239
311	United Gas Pipe Line Co	CI67-1543
312	Northwest Pipeline Corp	CI69-80
314	United Gas Pipe Line Co	CI68-1092
315	West Lake Natural Gasoline Co	G-15511
316	West Lake Natural Gasoline Co	G-15510
317	West Lake Natural Gasoline Co	G-20585
318	Transwestern Pipeline Co	CI68-92
319	Tennessee Gas Pipeline Co	CI67-868
320	Tennessee Gas Pipeline Co	CI69-68
321	Northern Natural Gas Co	CI69-67
322	Michigan Wisconsin Pipe Line Co	CI68-1321
323	Kansas Nebraska Natural Gas Co	CI69-403
324	Tennessee Gas Pipeline Co	CI69-622
325	Arkansas Louisiana Gas Co	CI69-650
326	El Paso Natural Gas Co	CI69-720
327	Texas Gas Transmission Corp	CI65-250
328	Trunkline Gas Co	CI67-557
329	Transwestern Pipeline Co	CI69-935
332	Tennessee Gas Pipeline Co	G-2889
333	El Paso Natural Gas Co	G-2890
334	El Paso Natural Gas Co	G-2891
335	El Paso Natural Gas Co	G-2892
336	El Paso Natural Gas Co	G-2893
337	El Paso Natural Gas Co	G-2894
338	Natural Gas Pipeline Co. of America	G-2895
339	Panhandle Eastern Pipe Line Co	G-2896
341	Natural Gas Pipeline Co. of America	G-2904
342	Arkansas Louisiana Gas Co	G-2905
345	Lone Star Gas Co	G-2916
346	Tennessee Gas Pipeline Co	G-2921
347	Diamond Shamrock Co	G-2927
348	Cities Service Gas Co	G-2930
349	Tennessee Gas Pipeline Co	G-4070
351	Mountain Fuel Supply Co	G-7310
352	Lone Star Gas Co	G-7674
354	Northern Natural Gas Co	G-8733
355	Tennessee Gas Pipeline Co	G-8760
356	Tennessee Gas Pipeline Co	G-8801
359	Texas Eastern Transmission Corp	G-8493
360	Texas Eastern Transmission Corp	G-8493
362	Tennessee Gas Pipeline Co	G-8493
363	El Paso Natural Gas Co	G-8493
365	Texas Eastern Transmission Corp	G-8493
367	El Paso Natural Gas Co	G-8493
368	El Paso Natural Gas Co	G-8493
369	Tennessee Gas Pipeline Co	G-8493
371	United Gas Pipe Line Co	G-9395
372	Transcontinental Gas Pipe Line Corp	G-9424
373	Tennessee Gas Pipeline Co	G-8493
374	Natural Gas Pipeline Co. of America	G-10119
375	Trunkline Gas Co	G-10179
376	Northern Natural Gas Co	G-11414
377	El Paso Natural Gas Co	G-11551
378	Natural Gas Pipeline Co. of America	G-11597
380	Southern Natural Gas Co	G-11229
381	Southern Natural Gas Co	G-11229
385	United Gas Pipe Line Co	G-11229
386	Texas Gas Transmission Corp	G-11229
388	United Gas Pipe Line Co	G-11229
389	Arkansas Louisiana Gas Co	G-11229
391	Northern Natural Gas Co	G-12311
392	Arkansas Louisiana Gas Co	G-12352
393	Texas Gas Transmission Corp	G-12352
398	Texas Eastern Transmission Corp	G-10269
399	Northern Natural Gas Co	G-12850
401	Natural Gas Pipeline Co. of America	G-13220
402	El Paso Natural Gas Co	G-13263
403	W. M. Laughlin	G-13330
404	Northern Natural Gas Co	G-13385
405	Colorado Interstate Gas Co	G-13701
406	El Paso Natural Gas Co	G-13805
407	Panhandle Eastern Pipe Line Co	G-13807
408	Northern Natural Gas Co	G-14401
411	El Paso Natural Gas Co	G-14791
413	Northern Natural Gas Co	G-16020

Appendix—Continued

RS No.	Purchaser	Certificate docket
414	Michigan Wisconsin Pipe Line Co	G-13299
415	Northern Natural Gas Co	G-16370
416	Northern Natural Gas Co	G-17308
417	El Paso Natural Gas Co	G-17309
418	Northern Natural Gas Co	G-17836
419	United Gas Pipe Line Co	G-17917
420	Tennessee Gas Pipeline Company	G-2922
421	Kansas Nebraska Natural Gas Co	G-18919
422	Panhandle Eastern Pipe Line Co	G-19222
423	El Paso Natural Gas Co	G-18747
424	Northern Natural Gas Co	G-19036
425	Michigan Wisconsin Pipe Line Co	G-20057
426	Cities Service Gas Co	G-19085
427	Cimmaron Transmission Company	G-17017
428	Transcontinental Gas Pipe Line Corp	G-20297
429	Transcontinental Gas Pipe Line Corp	G-20146
430	United Gas Pipe Line Co	G-19961
431	El Paso Natural Gas Co	G-18748
432	Natural Gas Pipeline Co. of America	CI60-129
*434	Transwestern Pipeline Co	G-17979
435	Natural Gas Pipeline Co. of America	CI60-460
436	Texas Gas Transmission Corp	CI60-593
437	United Gas Pipe Line Co	G-11229
438	Texas Gas Transmission Corp	CI61-76
439	Transwestern Pipeline Co	CI61-220
441	Southern Natural Gas Co	CI61-390
442	Transwestern Pipeline Co	CI61-498
443	Michigan Wisconsin Pipe Line Co	CI61-691
444	Lone Star Gas Co	CI61-949
445	Michigan Wisconsin Pipe Line Co	CI61-1032
446	Arkansas Louisiana Gas Co	CI61-1073
449	Trunkline Gas Co	CI61-1257
450	Transwestern Pipeline Co	CI61-1401
451	El Paso Natural Gas Co	CI61-1393
452	West Texas Gathering Co	CI61-1500
453	Panhandle Production Co	G-2923
454	Panhandle Eastern Pipe Line Co	CI61-1766
457	El Paso Natural Gas Co	CI62-96
458	El Paso Natural Gas Co	CI62-287
459	Texas Eastern Transmission Corp	CI62-296
461	Colorado Interstate Gas Co	G-2897
462	Northern Natural Gas Co	CI62-531
463	Natural Gas Pipeline Co. of America	CI62-530
464	Kansas Nebraska Natural Gas Co	G-2906
465	Cities Service Gas Co	G-2930
466	Colorado Interstate Gas Co	CI62-1070
467	Northern Natural Gas Co	CI62-1388
468	Tennessee Gas Pipeline Company	CI61-670
469	Southern Natural Gas Co	CI63-463
470	Cities Service Gas Co	CI63-538
471	Natural Gas Pipeline Co. of America	CI63-578
472	Lone Star Gas Co	CI63-603
473	Transcontinental Gas Pipe Line Corp	CI63-1104
474	Arkansas Louisiana Gas Co	CI63-1025
475	Arkansas Louisiana Gas Co	CI63-1026
476	Kansas Nebraska Natural Gas Co	CI63-1408
479	Lone Star Gas Co	CI64-11
480	Southern Natural Gas Co	G-14127
481	Arkansas Louisiana Gas Co	CI62-1184
482	Northern Natural Gas Co	G-3207
483	Natural Gas Pipeline Co. of America	CI60-112
487	Panhandle Eastern Pipe Line Co	CI63-121
488	El Paso Natural Gas Co	CI64-426
489	Natural Gas Pipeline Co. of America	CI64-545
490	Northern Natural Gas Co	CI64-546
491	Tennessee Gas Pipeline Company	G-4550
492	El Paso Natural Gas Co	G-4537
493	El Paso Natural Gas Co	G-4536
494	Transcontinental Gas Pipe Line Corp	G-4535
495	Transcontinental Gas Pipe Line Corp	G-4545
496	Tennessee Gas Pipeline Company	G-4543
497	El Paso Natural Gas Co	G-4548
498	El Paso Natural Gas Co	G-4547
499	El Paso Natural Gas Co	G-4546
500	El Paso Natural Gas Co	G-4542
501	El Paso Natural Gas Co	G-4541
502	El Paso Natural Gas Co	G-4540
503	El Paso Natural Gas Co	G-4539
504	Transcontinental Gas Pipe Line Corp	G-4538
505	Tennessee Gas Pipeline Company	G-4881
506	Texas Eastern Transmission Corp	G-8880
507	Texas Eastern Transmission Corp	G-12041
508	El Paso Natural Gas Co	G-15300
509	El Paso Natural Gas Co	G-13964
510	United Gas Pipe Line Co	G-16760
511	El Paso Natural Gas Co	G-16099
512	El Paso Natural Gas Co	CI61-1249
513	El Paso Natural Gas Co	CI61-1454
514	El Paso Natural Gas Co	CI64-438
515	Panhandle Eastern Pipe Line Co	CI64-621
516	Trunkline Gas Co	G-4319

Appendix—Continued

RS No.	Purchaser	Certificate docket
517	Trunkline Gas Co	G-3056
519	Columbia Gas Transmission Corp	G-2793
520	El Paso Natural Gas Co	G-2831
521	Northern Natural Gas Co	G-2828
522	United Gas Pipe Line Co	G-3910
523	Northern Natural Gas Co	G-9783
524	Northwest Pipeline Corp	G-10228
525	Trunkline Gas Co	G-10355
526	Tennessee Gas Pipeline Company	G-10849
527	United Gas Pipe Line Co	G-12128
528	El Paso Natural Gas Co	G-12449
529	Southern Natural Gas Co	G-3145
530	United Gas Pipe Line Co	G-3010
531	United Gas Pipe Line Co	G-3009
532	Tennessee Gas Pipeline Company	G-4288
533	Natural Gas Pipeline Co. of America	CI64-54
534	Transcontinental Gas Pipe Line Corp	G-12306
535	United Gas Pipe Line Co	G-14832
536	Texas Gas Transmission Corp	CI63-772
537	Lone Star Gas Co	CI62-27
539	Cities Service Gas Co	CI64-1481
544	Texas Eastern Transmission Corp	G-10963
545	Transcontinental Gas Pipe Line Corp	G-20018
547	Montana Dakota Utilities Co	CI64-1511
549	Lone Star Gas Co	CI65-371
551	Kansas Nebraska Natural Gas Co	CI65-421
552	El Paso Natural Gas Co	CI65-451
553	Northern Natural Gas Co	CI65-587
554	Texas Eastern Transmission Corp	G-14582
556	Cities Service Gas Co	CI65-1275
557	El Paso Natural Gas Co	CI65-1267
558	Michigan Wisconsin Pipe Line Co	CI65-1150
559	Kansas Nebraska Natural Gas Co	CI66-572
560	Texas Gas Transmission Crop	CI66-494
561	Lone Star Gas Co	CI66-635
562	Natural Gas Pipeline Co. of America	CI65-543
563	Natural Gas Pipeline Co. of America	CI66-832
564	Michigan Wisconsin Pipe Line Co	CI66-422
565	El Paso Natural Gas Co	CI66-806
566	Northern Natural Gas Co	CI66-410
568	Cities Service Gas Co	CI66-1128
569	Trunkline Gas Co	CI61-468
570	Panhandle Eastern Pipe Line Co	CI66-1234
571	Texas Gas Transmission Crop	CI66-1272
572	Trunkline Gas Co	CI66-1292
573	Michigan Wisconsin Pipe Line Co	CI67-55
574	Michigan Wisconsin Pipe Line Co	CI65-1166
575	Northern Natural Gas Co	CI67-152
576	Arkansas Louisiana Gas Co	CI67-209
577	Transcontinental Gas Pipe Line Crop	G-4544
578	Transcontinental Gas Pipe Line Crop	G-4544
580	El Paso Natural Gas Co	CI67-352
582	Northern Natural Gas Co	CI67-581
583	Northern Natural Gas Co	CI67-173
584	Natural Gas Pipe Line Co. of America	CI67-660
585	Columbia Gas Transmission Crop	CI67-753
586	Arkansas Louisiana Gas Co	CI67-792
588	Southern Natural Gas Co	CI67-567
589	El Paso Natural Gas Co	CI67-928
591	El Paso Natural Gas Co	CI67-1205
592	Natural Gas Pipe Line Co. of America	CI67-1642
594	Texas Gas Transmission Crop	CI65-1332
595	Michigan Wisconsin Pipe Line Co	CI67-1599
596	El Paso Natural Gas Co	CI67-365
597	Arkansas Louisiana Gas Co	CI68-55
598	Panhandle Eastern Pipe Line Co	CI68-139
600	Phillips Petroleum Co	G-2909
601	Southern Natural Gas Co	CI68-195
602	Southern Natural Gas Co	CI68-196
603	Southern Natural Gas Co	CI68-197
604	Northwest Pipeline Corp	CI68-672
605	Panhandle Eastern Pipe Line Co	CI68-757
606	Texas Eastern Transmission Corp	CI68-667
607	Panhandle Eastern Pipe Line Co	CI68-1007
608	Natural Gas Pipeline Co. of America	CI68-691
609	Natural Gas Pipeline Co. of America	CI68-690
610	Transcontinental Gas Pipe Line Corp	CI68-1058
611	Northern Natural Gas Co	CI68-1240
612	Montana Dakota Utilities Co	CI69-110
614	Cities Service Gas Co	CI69-30
615	Transwestern Pipeline Co	CI67-680
616	Natural Gas Pipeline Co. of America	CI69-581
618	Transcontinental Gas Pipe Line Corp	G-20182
619	Colorado Interstate Gas Co	CI69-812
620	Diamond Shamrock Co	CI69-835
621	Southern Natural Gas Co	CI69-958
623	Michigan Wisconsin Pipe Line Co	CI69-481
624	Michigan Wisconsin Pipe Line Co	CI69-1132
625	Trunkline Gas Co	CI69-794
626	United Gas Pipe Line Co	CI69-662
627	Tennessee Gas Pipeline Co	CI69-1125

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RS No.	Purchaser	Certificate docket
628	Transwestern Pipeline Co	CI70-180
629	Northern Natural Gas Co	CI70-207
631	Tennessee Gas Pipeline Co	CI70-635
632	Tennessee Gas Pipeline Co	CI70-651
633	El Paso Natural Gas Co	G-16768
634	Michigan Wisconsin Pipe Line Co	CI70-1067
635	Tennessee Gas Pipeline Co	CI70-1022
636	Phillips Petroleum Co	G-2913
638	El Paso Natural Gas Co	CI71-674
639	Michigan Wisconsin Pipe Line Co	CI67-541
640	Northern Natural Gas Co	CI71-864
641	Arkansas Louisiana Gas Co	CI72-26
642	El Paso Natural Gas Co	CI72-79
643	Michigan Wisconsin Pipe Line Co	CI62-606
644	Tennessee Gas Pipeline Co	CI72-96
645	Arkansas Louisiana Gas Co	CI72-147
646	Colorado Interstate Gas Co	CI72-155
648	Transcontinental Gas Pipe Line Corp	CI72-186
649	Natural Gas Pipeline Co. of America	CI71-451
651	Arkansas Louisiana Gas Co	CI72-432
652	Southern Natural Gas Co	CI72-501
653	Natural Gas Pipeline Co. of America	CI72-525
654	Transwestern Pipeline Co	CI72-587
655	Transcontinental Gas Pipe Line Corp	CI72-672
657	United Gas Pipe Line Co	CI61-1210
658	Caprock Pipeline Co	CI72-737
659	Michigan Wisconsin Pipe Line Co	CI73-12
660	Tennessee Gas Pipeline Co	CI73-144
663	Tennessee Gas Pipeline Co	CI73-332
664	Tennessee Gas Pipeline Co	CI73-493
666	El Paso Natural Gas Co	CI73-591
667	Cascade Natural Gas Corp	CI73-340
668	El Paso Natural Gas Co	CI73-673
669	Texas Eastern Transmission Corp	CI73-447
670	Northern Natural Gas Co	CI73-859
671	United Gas Pipe Line Co	CI73-856
672	Southern Natural Gas Co	CI73-639
673	Transwestern Pipeline Co	CI74-182
676	El Paso Natural Gas Co	CI74-457
677	Northwest Pipeline Corp	G-4547
678	Northwest Pipeline Corp	CI65-461
679	Northwest Pipeline corp	CI66-823
680	Natural Gas Pipeline Co. of America	CI74-570
681	El Paso Natural Gas Co	CI74-684
682	Northwest Pipeline Corp	CI65-571
683	Southern Natural Gas Co	CI75-78
684	Trunkline Gas Co	CI75-144
685	Tennessee Gas Pipeline Co	CI75-162
686	Tennessee Gas Pipeline Co	CI75-171
687	Michigan Wisconsin Pipe Line Co	CI75-221
688	Natural Gas Pipeline Co. of America	CI75-361
689	United Gas Pipe Line Co	CI75-458
690	Texas Gas Transmission Corp	CI75-411
691	Michigan Wisconsin Pipe Line Co	CI65-1150
692	El Paso Natural Gas Co	CI75-664
693	Trunkline Gas Co	CI76-2
694	Tennessee Gas Pipeline Co	CI75-651
695	Transwestern Pipeline Co	CI76-52
697	El Paso Natural Gas Co	CI76-50
698	El Paso Natural Gas Co	CI76-226
699	El Paso Natural Gas Co	CI76-335
700	El Paso Natural Gas Co	CI76-331
701	Tennessee Gas Pipeline Co	CI76-357
703	Transwestern Pipeline Co	CI76-393
704	Cities Service Gas Co	CI76-395
705	Southern Natural Gas Co	CI76-586
706	Tennessee Gas Pipeline Co	CI76-641
707	Tennessee Gas Pipeline Co	CI76-746
708	Transcontinental Gas Supply Co	CI77-210
709	El Paso Natural Gas Co	CI77-236
710	Northern Natural Gas Co	CI77-480
711	Arkansas Louisiana Gas Co	CI77-547
712	Michigan Wisconsin Pipe Line Co	CI77-621
713	Northern Natural Gas Co	CI77-617
714	Michigan Wisconsin Pipe Line Co	CI77-736
715	Transwestern Pipeline Co	CI77-737
718	El Paso Natural Gas Co	CI77-772
719	Colorado Interstate Gas Co	CI77-780
720	Northwest Pipeline Corp	CI77-790
721	Southern Natural Gas Co	CI77-804
722	Michigan Wisconsin Pipe Line Co	CI77-646
723	Northern Natural Gas Co	CI78-142
724	Northern Natural Gas Co	CI78-571
725	El Paso Natural Gas Co	CI78-636
726	Southern Natural Gas Co	CI78-504
727	El Paso Natural Gas Co	CI78-606
728	El Paso Natural Gas Co	CI78-617
729	Northern Natural Gas Co	CI78-686
730	El Paso Natural Gas Co	CI78-805
731	Northwest Pipeline Corp	CI78-924
732	Northwest Pipeline Corp	CI78-737

Appendix—Continued

RS No. and purchaser	Certificate docket
733 El Paso Natural Gas Co	CI78-999
734 Transco Gas Supply Co	CI78-1062
735 El Paso Natural Gas Co	CI78-1039
736 El Paso Natural Gas Co	CI78-1105
737 Northern Natural Gas Co	CI78-1227
738 Pioneer Gas Products Co	CI78-1228
739 El Paso Natural Gas Co	CI78-1260
740 El Paso Natural Gas Co	CI79-24

Pending Dockets

CI77-228, CI77-756, CI77-757, CI78-567, CI78-706, CI78-712, CI78-755, CI78-1222, CI78-1225.

[FR Doc. 79-36803 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-8]

Bangor Hydro-Electric Co.; Application for Exemption

November 23, 1979.

Take notice that Bangor Hydro-Electric Company (Bangor), on October 30, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Bangor states that it should not be required to file the specified data for the following reasons:

(1) Of Bangor's total retail sales of 1.2 billion kilowatt-hours in 1978, firm sales were 0.96 billion kilowatt-hours. Bangor should be given the exemption described in Section 290.102(d) for utilities having sales less than 1.0 billion kilowatt-hours.

(2) Bangor's high load factor and ability to manage load represent dramatic steps toward meeting the first two purposes of Title I, namely conservation and efficient use of equipment.

(3) Bangor's present level of involvement and demonstrated effort to fulfillment of the purposes of Section 133 and PURPA represents a satisfactory commitment at this time in the areas of accounting cost data, marginal cost data, and load data.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36805 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. SA79-30]

Cities Service Gas Co.; Supplement to Amended Application or Adjustment

November 21, 1979.

Take notice that on November 9, 1979, Cities Service Gas Company (Cities Service) filed a supplement to its application of September 18, 1979, as amended on October 11, 1979, for an adjustment to the Commission's Regulations implementaing Section 401 of the Natural Gas Act of 1978 (NGPA) which were promulgated by Commission Order No. 29 issued May 2, 1979 in Docket No. RM79-15. The proforma tendered sheets are designated Substitute Second Revised Sheet Nos. 50 and 53, to replace Second Revised Sheet Nos. 50 and 53, respectively, filed on September 18, 1979.

Section 2(a) of Article 13 of the General Terms and Conditions of Cities Service's FERC Gas Tariff sets forth the priority categories to be utilized for purposes of allocation of gas supply during periods of curtailment. The changes in these priority categories which Cities Service proposed to implement by its September 18, 1979 filing, as amended, were set forth in the proposed Second Revised Sheet No. 50 attached to Cities Service's original application in this proceeding. Priority Category II was defined therein to include, in part, "industrial requirements of less than 2,000 Mcf per month" but did not specifically include essential agricultural requirements of less than 3,000 Mcf per month. Priority Category III was defined to include "essential agricultural requirements" and did not indicate any volumetric limitation on the requirements which would be classified in Priority Category III.

Cities Service in its instant filing proposes to classify commercial requirements of 1,000 Mcf per month or more, but less than 3,000 Mcf per month and essential agricultural, as well as industrial, requirements of less than 3,000 Mcf per month in Priority Category II. Such essential agricultural requirements are classified in Priority 2 of Cities existing plan. Cities Service states continuation of this classification is consistent with the requirements of Section 281.205 in that it affords, to the maximum extent practicable on Cities Service's system, the second highest curtailment priority to essential agricultural uses.

Category III has been revised to read, "All other essential agricultural requirements for which no determination has been made by the Federal Energy Regulatory Commission, in consultation with the Secretary of Agriculture, that an alternate fuel is economically practicable and reasonably available."

Cities Service states it has thus clarified the proposed Section 2(a) in the Substitute Second Revised Sheet No. 50 to more clearly define those requirements which Cities Service proposes to include in Priority Categories I, II and III.

The tendered tariff sheets would also amend Cities original Section 1.41 adjustment request so that all plant protection requirements, including those of essential agricultural users, can continue to be classified in Priority Category II. Section 5(a) has been deleted from Second Revised Sheet No. 53.

Any person desiring to participate in the adjustment proceeding in this docket shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20406, 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 on or before December 31, 1979.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36806 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-319]

Consolidated Gas Supply Corp.; Order Issuing Certificate of Public Convenience and Necessity for Sale of Surplus Gas

November 21, 1979.

This proceeding involves the question of whether the Commission should grant a certificate of public convenience and necessity authorizing a limited-term sale of natural gas to Texas Gas

Transmission Corporation (Texas Gas). The application is being considered under section 7(c) of the Natural Gas Act.

A temporary certificate of public convenience and necessity authorizing the sale of the gas was issued to Consolidated Gas Supply Corporation (Con Gas) on July 27, 1979. The certificate was limited to a term ending 60 days after commencement of deliveries. The Commission extended the term of the temporary certificate for an additional 60 days to November 27, 1979.

A hearing concerning the proposed transaction was held on September 6, 1979. At the conclusion of the hearing the administrative law judge, in accordance with our instructions, certified the record directly to the Commission for decision.

The gas is to be sold to Texas Gas by Consolidated Gas Supply Corporation (Con Gas), a jurisdictional interstate pipeline company. On May 17, 1979 Texas Gas entered into a gas purchase agreement with Con Gas for the purchase of an average of 100,000 dekatherms, (dth) of natural gas per day or an annual quantity of 36,500,000 dth for a term of 30 months.

Con Gas is a wholly-owned subsidiary of Consolidated Natural Gas Company and is engaged in the business of producing, purchasing, storing, and transporting natural gas and selling such gas at wholesale to customers principally in New York, Ohio, and Pennsylvania. It also sells gas at retail in West Virginia. Its main transmission facilities are in West Virginia, Ohio, Pennsylvania, and New York. It purchases and produces natural gas from local sources in West Virginia, Pennsylvania, and New York, and also purchases gas in Louisiana and the Gulf of Mexico from its affiliate, CNG Producing Company (CNG), and others. Additionally, it purchases gas from nonaffiliated pipeline suppliers. Tennessee Gas Pipeline Company (Tennessee), Texas Eastern Transmission Corporation (Texas Eastern), Texas Gas Transmission Corporation (Texas Gas), and Transcontinental Gas Pipeline Corporation (Transco). Con Gas produces and purchases gas in the Appalachian area and also purchases regasified LNG from its affiliate, Consolidated System LNG Company.

Texas Gas is an interstate natural gas pipeline company subject to the Commission's jurisdiction under the Natural Gas Act. As such, its facilities extend from supply sources onshore and offshore Louisiana and Texas, through the states of Arkansas, Mississippi, Tennessee, Kentucky, Indiana, and Illinois to a terminus near Lebanon, Ohio. Texas Gas renders service to over 100 customers in such market areas, including natural gas distribution companies, five interstate pipeline companies and, to a minor extent, direct sale industrials.

The gas volumes proposed to be sold by Con Gas are a portion of the reserves developed by Con Gas and CNG in Louisiana and the Gulf of Mexico. The gas will be produced from the outer continental shelf which is part of the offshore federal domain.

The gas sales agreement provides that the initial price of the gas is $1.96 per dth from the first day of delivery (July 1, 1979) through December 31, 1981. Thereafter, the price will increase by 7 cents per dth semiannually. The agreement is effective for 30 months commencing on the first day of deliveries.

The gas will be delivered to Texas Gas or for its account in South Louisiana at two primary points:

(1) Blue Water—The existing measuring and regulating station located at the northern terminus of the Blue Water facilities near Egan, Louisiana, where that pipeline system interconnects with the facilities of Texas Gas; and

(2) HIOS—The northern terminus of the High Island Offshore System (HIOS) at the West Cameron Block 167 (Platform where the HIOS facilities interconnect witht he facilities of Michigan Wisconsin Pipeline Company).

The record amply demonstrates that Con Gas will have surplus gas available to provide the volumes necessary to meet its Texas Gas obligation. In 1978, Con Gas had total gas requirements of 926.8 Bcf. This left a surplus of 9.4 Bcf. The company projects that in 1979 its requirements will be 930.1 Bcf, and its available supply will be 1,057.6 Bcf leaving a surplus of 127.5 Bcf. In 1980 its surplus will be 112.2 Bcf with total requirements of 911.1 Bcf and an available supply of 1,023.2 Bcf.

The excess gas that is available is due largely to Con Gas's self-help efforts which include Appalachian supply, Louisiana supply, and LNG. As to Louisiana gas which is in issue here, Con Gas received 34.8 Bcf in 1978. In 1979 and 1980 it estimates its available supply will be 64.7 Bcf and 76.8 Bcf respectively.

Absent a sale to Texas Gas and to Consolidated Edison (Con Ed), Con Gas probably would have only limited success in disposing of its surplus gas. The company's witness testified that during late 1978 and early 1979 attempts to sell the surplus gas on a short-term, interruptible basis were made to Con Gas's pipeline suppliers. The pipelines indicated they were not interested in purchasing the gas for several reasons, including the relatively high cost of the gas, the interruptible and short-term nature of the sale, and the belief by the pipelines that they already were serving the current high priority requirements of their systems. However, subsequent to these discussions, Texas Gas indicated that it would be willing to purchase certain volumes of the surplus for its general system supply. A contract for the sale of 100,000 dth per day to Texas Gas was executed on May 17, 1979. The company states it is currently considering making other limited-term off system sales, but other than the sales to Texas Gas and Con Ed, Con Gas has been unable to make any sales of its surplus gas. Con Gas is also trying to reduce its surplus by other means. First, it has reduced its Appalachian supply program. Second, it has temporarily modified its high priority load attachment policy to provide for limited term attachments of lower priority loads by system distribution companies. And, it will fully utilize its developed storage capacity during the excess supply period.

If Con Gas is unable to eliminate its surplus by off-system sales or other means, it will either have to husband the gas or reduce its takes from its pipeline suppliers. The record shows, however, that Con Gas has already reduced its takes during the year, and further reductions may cause the company to incur penalties because of minimum bill provisions. Con Gas began its cutbacks in December 1978. At times during 1979, Con Gas's takes from three of its suppliers, Tennessee, Texas Gas, and Transco, were cut to minimum bill levels. Takes from Tennessee have been reduced to the minimum bill level since April 4, 1979. In addition Con Gas's ability to store gas at present is severely limited.

It does not appear that the sale of the gas to Texas Gas will have any impact on Con Gas's ability to serve other customers. The agreement provides that the sales are subordinate to the requirements of Con Gas's other customers. Also, the delivery of the gas is fully interruptible at Con Gas's discretion.

The companies' witnesses testified that much of this gas sold by Texas Gas would ultimately go toward displacing boiler fuel oil. Our recent decision in Docket No. CP79-228, *Transcontinental Gas Pipeline Corporation*, issued August 13, 1979, in which the transportation of gas to displace boiler fuel oil was

approved, involved a situation similar to the present case. In this instance the sale of gas could result in boiler fuel oil displacement on a temporary basis and if so, would also be reasonable and in the public interest.

The price Con Gas will charge Texas Gas is also reasonable. The price was arrived at after arms-length bargaining between the two parties and is based on the cost of Con Gas's Louisiana supply which, at the time of the agreement, was that company's most expensive source of supply.

No party objectives to this sale. Staff and the Public Service Commission of New York (NYPSC), however, have conditioned their recommendations for approval. The staff maintains that the price of the gas should be based on Con Gas's actual costs and not on estimated, imputed costs, as is the case here.[1] Otherwise, says staff, Con Gas's customers may end up subsidizing Texas Gas if the actual price of purchased gas supersedes the estimated, imputed price. NYPSC makes the same argument, but would allow the imputed price to remain in effect until the actual price of gas tops the imputed price, and at that point switch over to actual costs for pricing purposes.

We believe that the staff's and NYPSC's fears are exaggerated. There is ample evidence in the record to support Con Gas and Texas Gas's negotiated price.[2] The staff and NYPSC have presented no evidence that the negotiated price is unjust or unreasonable. Without such evidence, we see no basis here for either denying or attempting to alter the contract between Con Gas and Texas Gas.

Furthermore, all benefits of this sale will be flowed-through to Con Gas's customers through credits to its purchased gas costs and Account 191.

While the gas will come from the offshore federal domain, it does not involve producer reserved gas. The gas will become part of the general system supply of the interstate pipeline system. Thus, we see no conflict here with the policy established in Opinion No. 10, *Tenneco Oil Co.*, March 20, 1978, rehearing denied, Opinion No. 10-A, June 21, 1978.

We conclude that, for the reasons discussed above, it is in the public interest to grant Con Gas a certificate of public convenience and necessity to sell offshore federal domain gas.

As we indicated above, it is essential that Texas Gas requirements be subordinated to Con Gas's other services. Our objective is to give Texas Gas access to the temporary surplus of gas which has developed on Con Gas's system without providing it an advantage over those customers who rely upon interstate system supplies to meet their high priority requirements. Our issuance of the requested certificate is conditioned accordingly.

The Commission finds:

(1) Con Gas is able and willing to do the acts and perform the services proposed and to conform to the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(2) The sale by Con Gas is required by the public convenience and necessity and a certificate should be issued as hereinafter conditioned and ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Con Gas for the sale of natural gas to Texas Gas as discussed herein. The certificate will terminate on December 31, 1981.

(B) The certificate incorporates the representations of the applicant as to the actions to be taken and service to be performed and is issued upon the following terms and conditions:

(1) The sales made by Con Gas shall be subordinate to all requirements of that company's other customers.

(2) All volumes of natural gas sold, transported and purchased pursuant to this arrangement shall not be considered as either a gas supply or market in determination of any interstate pipeline company's end use profile for present or future allocations of natural gas during periods of natural gas curtailment.

(3) In accordance with Section 7(b) of the Natural Gas Act, abandonment of the above described service on December 31, 1981, is granted.

By the Commission.

Kenneth F. Plumb,

Secretary.

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BILLING CODE 6450-01-M

[1] As of July 1, 1979, the price charged Texas Gas by Con Gas is $1.96/dth, with $1.72/dth representing the purchased gas cost component.

The basis for the price is an estimate, made in January 1979, of the average purchased gas cost of Con Gas's Louisiana gas, which at that time was estimated at $1.65/dth. to that cost Con Gas added 24 cents/dth as its average cost for off-shore transportation, plus 7 cents/dth to cover the Louisiana First Use Tax, totalling to $1.96/dth. Con Gas then discounted the transportation component of the $1.96/dth by 76 cents/dth because the sale of Texas Gas is interruptible and because Texas Gas has agreed to a take-or-pay obligation under the sales contract.

[2] Exhibit Number 4, Transcript 84, 99, 101.

Determinations by Jurisdictional agencies Under the Natural Gas Policy Act of 1978

November 15, 1979.

The Federal Energy Regulatory Commission received notices from the Jurisdictional Agencies listed below of determinations pursuant to Natural Gas Policy Act of 1978.

Arkansas Oil and Gas Commission

1. Control number (F.E.R.C./State)
2. API Well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS Area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04354
2. 03-047-10135-0000
3. 102 000 000
4. Seeco Inc
5. Miller 1-28
6. Lone Elm
7. Franklin, AR
8. .0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04355
2. 03-047-10079-0000
3. 103 000 000
4. Seeco Inc
5. Rue 1-31
6. Rock Creek
7. Franklin, AR
8. 130.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04356
2. 03-047-10109-0000
3. 103 000 000
4. Seeco Inc
5. McClurkin #1-17
6. Lone Elm
7. Franklin, AR
8. 200.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-043357
2. 03-047-10087-0000-1
3. 103 000 000
4. Seeco Inc
5. Smith 1-22-C
6. Jethro
7. Franklin, AR
8. 70.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04358
2. 03-047-10087-0000-2
3. 103 000 000
4. Seeco Inc
5. Smith 1-22-UT
6. Jethro
7. Franklin, AR
8. 70.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04359
2. 03-047-10087-0000-3

3. 103 000 000
4. Seeco Inc
5. Smith 1-22-LT
6. Jethro
7. Franklin, AR
8. 70.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04360
2. 03-047-10082-0000
3. 103 000 000
4. Seeco Inc
5. Clements 1-2
6. Lone Elm
7. Franklin, AR
8. 200.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04361
2. 03-071-10167-0000-1
3. 103 000 000
4. Seeco Inc
5. Hunt #1-17-C
6. Batson
7. Johnson, AR
8. 150.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04362
2. 03-071-10167-0000-2
3. 103 000 000
4. Seeco Inc
5. Hunt #1-17-UT
6. Batson
7. Johnson, AR
8. 150.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04363
2. 03-071-10167-0000-3
3. 103 000 000
4. Seeco Inc
5. Hunt #1-17-LT
6. Batson
7. Johnson, AR
8. 150.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04364
2. 03-047-10130-0000
3. 103 000 000
4. Seeco Inc
5. R Whitehead #1-8
6. Altus Field
7. Franklin, AR
8. 350.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04365
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Hoyle No 1
6. Jethro
7. Franklin, AR
8. 4.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04366
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Patrick Est #2
6. Rock Creek
7. Franklin, AR
8. 4.2 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04367
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Mattox No 1
6. Watalula
7. Franklin, AR
8. 15.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04368
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Harb Unit #1
6. Rock Creek
7. Franklin, AR
8. 5.6 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04369
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Post No 1
6. Altus
7. Franklin, AR
8. 9.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04370
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. E A Reynolds No 1
6. Peter Pender
7. Franklin, AR
8. 15.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04371
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Missouri Pacific RR #4
6. Rock Creek
7. Franklin, AR
8. 3.5 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04372
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Sullivan No 1
6. Altus
7. Franklin, AR
8. 10.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04373
2. 03-047-00000-0000
3. 108 000 000
4. Seeco Inc
5. Hamm No 3
6. Jethro
7. Franklin, AR
8. 7.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04374
2. 03-047-10040-0000
3. 108 000 000
4. Seeco Inc
5. Stapp No 2-T
6. Lone Elm
7. Franklin, AR
8. 8.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04375
2. 03-047-10038-0000
3. 108 000 000
4. Seeco Inc
5. Harris Estates No 2
6. Rock Creek
7. Franklin, AR
8. 11.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04376
2. 03-071-10162-0000-1
3. 102 000 000
4. Seeco Inc
5. Leavell 1-25-C
6. Lutherville
7. Johnson, AR
8. .0 million cubic feet
9. October 26, 1979
10.

1. 80-04377
2. 03-071-10162-0000-2
3. 102 000 000
4. Seeco Inc
5. Leavell 1-25-T
6. Lutherville
7. Johnson, AR
8. .0 million cubic feet
9. October 26, 1979
10.

1. 80-04378
2. 03-071-10158-0000
3. 103 000 000
4. Seeco Inc
5. McCracken #1-33
6. Ozone
7. Johnson
8. 50.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04379
2. 03-071-10147-0000
3. 103 000 000
4. Seeco Inc
5. Stratton 1-5
6. Ozone
7. Johnson, AR
8. 40.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04380
2. 03-071-10150-0000
3. 103 000 000
4. Seeco Inc
5. Gould Inc
6. Union City
7. Johnson, AR
8. 35.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04381
2. 03-071-10163-0000
3. 103 000 000
4. Seeco Inc
5. Montgomery No 3-4
6. Batson

7. Johnson, AR
8. 25.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04382
2. 03-071-10144-0000
3. 103 000 000
4. Seeco Inc
5. Timmerman 1-8
6. Union City
7. Johnson, AR
8. 70.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04383
2. 03-071-10148-0000-1
3. 103 000 000
4. Seeco Inc
5. Bibler Bros 1-8-C
6. Batson
7. Johnson, AR
8. 75.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04384
2. 03-071-10148-0000-2
3. 103 000 000
4. Seeco Inc
5. Bibler Bros 1-8-UT
6. Batson
7. Johnson, AR
8. 75.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04385
2. 03-071-10148-0000-3
3. 103 000 000
4. Seeco Inc
5. Bibler Bros 1-8-LT
6. Batson
7. Johnson, AR
8. 75.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04386
2. 03-071-10164-0000
3. 103 000 000
4. Seeco Inc
5. Carlton #1-9
6. Batson
7. Johnson, AR
8. .0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04387
2. 03-071-10160-0000
3. 103 000 000
4. Seeco Inc
5. Flournoy #1-5
6. Batson
7. Johnson, AR
8. 50.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04388
2. 03-071-00000-0000
3. 108 000 000
4. Seeco Inc
5. D B Castleberry No 1
6. Coal Hill
7. Johnson, AR
8. 8.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04389
2. 03-071-10096-0000
3. 108 000 000
4. Seeco Inc
5. Harkreader No 1
6. Union City
7. Johnson, AR
8. 10.0 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

1. 80-04390
2. 03-071-00000-0000
3. 108 000 000
4. Seeco Inc
5. Allison B No 1
6. Spadra
7. Johnson, AR
8. 5.7 million cubic feet
9. October 26, 1979
10. Arkansas Western Gas Company

California Department of Conservation, Division of Oil and Gas

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04451/79-4-0014
2. 04-029-58033-0000
3. 102 000 000
4. Oxy Petroleum Inc
5. Chevron 11-5
6. Cal Canal
7. Kern, CA
8. .0 million cubic feet
9. October 26, 1979
10. Belridge Oil Company

1. 80-04452/79-4-0012
2. 04-029-58505-0000
3. 102 000 000
4. Oxy Petroleum Inc
5. Chevron 41-31
6. Cal Canal Field
7. Kern, CA
8. 197.0 million cubic feet
9. October 26, 1979
10. Belridge Oil Company

1. 80-04453/79-4-0013
2. 04-029-57840-0000
3. 102 000 000
4. Oxy Petroleum Inc
5. Chevron 43X-31
6. Cal Canal
7. Kern, CA
8. 11.0 million cubic feet
9. October 26, 1979
10. Belridge Oil Co

Montana Board of Oil and Gas Conservation

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04201/9-79-264
2. 25-071-21620-0000
3. 103 000 000
4. Falcon-Colorado Exploration Inc
5. 2-20 Fisher
6. Swanson Creek
7. Phillips, MT
8. 7.4 million cubic feet
9. October 26, 1979
10. Montana-Dakota Utilities Co

New Mexico Department of Energy and Minerals, Oil Conservation Division

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04454
2. 30-045-23337-0000
3. 103 000 000
4. Southland Royalty Company
5. Culpepper Martin No. 2A
6. Blanco Mesa Verde
7. San Juan, NM
8. 365.0 million cubic feet
9. October 29, 1979
10. Southern Union Gathering Company

1. 80-04455
2. 30-045-23334-0000
3. 103 000 000
4. Southland Royalty Company
5. Culpepper Martin No. 8A
6. Blanco Mesa Verde
7. San Juan, NM
8. 350.0 million cubic feet
9. October 29, 1979
10. Southern Union Gathering Company

1. 80-04456
2. 30-045-09918-0000
3. 108 000 000
4. Horace F McKay Jr
5. Maxwell No. 1
6. Aztec Pictured Cliffs
7. San Juan, NM
8. 13.2 million cubic feet
9. October 29, 1979
10. El Paso Natural Gas Co

1. 80-04457
2. 30-045-23368-0000
3. 103 000 000
4. Southland Royalty Company
5. Rattlesnake Canyon #1A
6. Blanco Mesa Verde
7. San Juan, NM
8. 200.0 million cubic feet
9. October 29, 1979
10. El Paso Natural Gas Company

1. 80-04458
2. 30-015-22548-0000
3. 103 000 000
4. Yates Petroleum Corporation
5. Kennedy JQ Com No. 1
6. Wildcat Canyon
7. Eddy, NM
8. .0 million cubic feet
9. October 29, 1979
10. Transwestern Pipeline Company

1. 80-04459
2. 30-015-22185-0000
3. 103 000 000

4. Yates Petroleum Corporation
5. Humphrey IH No. 1
6. Atoka San Andres
7. Eddy, NM
8. .0 million cubic feet
9. October 29, 1979
10. Transwestern Pipeline Company

1. 80-04460
2. 30-045-20696-0000
3. 108 000 000 Denied
4. Dugan Production Corp
5. Cline #1
6. Twin Mounds
7. San Juan, NM
8. 18.0 million cubic feet
9. October 29, 1979
10. El Paso Natural Gas Company

1. 80-04461
2. 30-025-10720-0000
3. 108 000 000
4. Arco Oil and Gas Company
5. W T Matkins WN #2
6. Jalmat
7. Lea, NM
8. .6 million cubic feet
9. October 29, 1979
10. El Paso Natural Gas Company

1. 80-04462
2. 30-025-26229-0000
3. 103 000 000
4. Phillips Petroleum Company
5. Vacuum GB/SA Unit TR 3328 #002
6. Vacuum Grayburg/San Andres
7. Lea, NM
8. 100.0 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Company

Ohio Department of Natural Resources, Division of Oil and Gas

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-04209/05566
2. 34-007-20968-0014
3. 103 000 000
4. Meridian Oil & Gas Ent Inc
5. J G Fleming Well #1
6.
7. Ashtabula OH
8. 18.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04210/06652
2. 34-127-24314-0014
3. 103 000 000
4. L & M Petroleum
5. Neil Adcock #1
6.
7. Perry OH
8. 18.3 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission

1. 80-04211/06833
2. 34-115-21578-0014
3. 103 000 000
4. MTD Products Inc
5. William H Barnett #1
6.
7. Morgan OH
8. .0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04212/06834
2. 34-115-21579-0014
3. 103 000 000
4. MTD Products Inc
5. Forest Knox #1
6.
7. Morgan OH
8. .0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04213/06835
2. 34-115-21577-0014
3. 103 000 000
4. MTD Products Inc
5. R Parmiter #1
6.
7. Morgan OH
8. .0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04214/06942
2. 34-157-23349-0014
3. 103 000 000
4. William N Tipka
5. Walter N Quigley #1
6.
7. Tuscarawas OH
8. 35.0 million cubic feet
9. October 26, 1979
10.

1. 80-04215/07004
2. 34-121-22173-0014
3. 103 000 000
4. DDC Inc
5. Harry Schenkel #1
6. Keith
7. Noble OH
8. 35.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04216/07038
2. 34-083-22412-0014
3. 103 000 000
4. Independent Oil Investors
5. Edith Elliott #1
6.
7. Knox OH
8. .0 million cubic feet
9. October 26, 1979
10.

1. 80-04217/07110
2. 34-089-23587-0014
3. 103 000 000
4. Zenith Oil & Gas Inc
5. Hardy #1
6. South Perryton
7. Licking OH
8. 5.0 million cubic feet
9. October 26, 1979
10.

1. 80-04218/07171
2. 34-089-23657-0014
3. 103 000 000
4. Hortin & Huffman
5. No. 1 Eileen G Oyler
6. Tobosco
7. Licking OH
8. 2.0 million cubic feet
9. October 26, 1979
10. Bowerston Shale Company

1. 80-04219/07186
2. 34-155-21190-0014
3. 103 000 000
4. Gasearch Inc
5. No. 1 Liberatore-Bruno
6.
7. Trumbull OH
8. 100.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company

1. 80-04220/07218
2. 34-157-23394-0014
3. 103 000 000
4. K S T Oil & Gas Co Inc
5. T V Breyer #5
6.
7. Tuscarawas OH
8. 36.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04221/07219
2. 34-157-23396-0014
3. 103 000 000
4. K S T Oil & Gas Co Inc
5. T Breyer #1
6.
7. Tuscarawas OH
8. 36.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04222/07220
2. 34-157-23395-0014
3. 103 000 000
4. K S T Oil & Gas Co Inc
5. H Breyer #3
6.
7. Tuscarawas OH
8. 36.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04223/07234
2. 34-121-22050-0014
3. 103 000 000
4. Oneal Productions Inc
5. Ginn-McVay #1
6.
7. Noble OH
8. 31.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company

1. 80-04224/07241
2. 34-127-24204-0014
3. 103 000 000
4. Wilson Petroleum Corporation
5. Leo Clark #1-A
6.
7. Perry OH
8. .0 million cubic feet
9. October 26, 1979
10.

1. 80-04225/07257
2. 34-119-24817-0014
3. 103 000 000
4. Berea Oil and Gas Corp
5. McConaha #1
6.
7. Muskingum OH
8. 18.3 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission

1. 80-04226/07258
2. 34-151-22968-0014
3. 103 000 000
4. New Frontier Exploration Inc
5. Russell Parrish #1

6.
7. Stark OH
8. 24.0 million cubic feet
9. October 26, 1979
10. Columbia Gas of Ohio
1. 80-04227/07259
2. 34-155-21275-0014
3. 103 000 000
4. Berea Oil and Gas Corp
5. Crew #1
6.
7. Trumbull OH
8. 25.6 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04228/07260
2. 34-119-24819-0014
3. 103 000 000
4. Berea Oil and Gas Corporation
5. McConaha Unit #2
6.
7. Muskingum OH
8. 14.6 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04229/07261
2. 34-169-22194-0014
3. 103 000 000
4. Kenoil
5. Doris McIlvaine #1
6.
7. Wayne OH
8. 0. million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04230/07262
2. 34-103-22146-0014
3. 103 000 000
4. Leslie Oil & Gas Co Inc
5. Frank Simmerman #2
6.
7. Medina County OH
8. 3.5 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04231/07263
2. 34-155-20781-0014
3. 103 000 000
4. Berea Oil and Gas Corporation
5. H Schlact #3
6.
7. Trumbull OH
8. 13.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04232/07264
2. 34-167-24378-0014
3. 103 000 000
4. L & M Petroleum
5. Robert Barth #3
6.
7. Washington OH
8. 12.8 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04233/07265
2. 34-167-24375-0014
3. 103 000 000
4. L & M Petroleum
5. Robert Barth #6
6.
7. Washington OH
8. 12.8 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04234/07266
2. 34-119-24569-0014
3. 103 000 000
4. Southern Ohio Energy Company
5. Robert & Margaret McBride #2
6.
7. Muskingum OH
8. 2.5 million cubic feet
9. October 26, 1979
10. International Harvester Company
1. 80-04235/01470
2. 34-119-22928-0014
3. 108 000 000
4. The Clinton Oil Co
5. Clarance A Goss #4
6.
7. Muskingum OH
8. 2.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04236/01480
2. 34-119-22872-0014
3. 108 000 000
4. The Clinton Oil Co
5. Hanna Coal #1
6.
7. Muskingum OH
8. 2.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04237/01770
2. 34-151-22363-0014
3. 108 000 000 denied
4. Nucorp Energy Company
5. Weaver Well #1
6.
7. Stark County OH
8. 11.4 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04238/07267
2. 34-119-24482-0014
3. 103 000 000
4. Southern Ohio Energy Company
5. Philip Longstreth #1
6.
7. Muskingum OH
8. .5 million cubic feet
9. October 26, 1979
10. International Harvester Company
1. 80-04239/07268
2. 34-119-24481-0014
3. 103 000 000
4. Southern Ohio Energy Company
5. Robert & Margaret McBride #1
6.
7. Muskingum OH
8. 2.0 million cubic feet
9. October 26, 1979
10. International Harvester Company
1. 80-04240/07269
2. 34-167-24730-0014
3. 103 000 000
4. L & M Petroleum
5. Robert Barth #7
6.
7. Washington OH
8. 12.8 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04241/07270
2. 34-167-24666-0014
3. 103 000 000
4. L & M Petroleum
5. Kermit Lane #1
6.
7. Washington OH
8. 12.8 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04242/07271
2. 34-167-24644-0014
3. 103 000 000
4. L & M Petroleum
5. Frank Ball #1
6.
7. Washington OH
8. 12.8 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04243/07282
2. 34-163-20403-0014
3. 103 000 000
4. American Well Management Company
5. Wright No 1
6.
7. Vinton OH
8. 18.0 million cubic feet
9. October 26, 1979
10.
1. 80-04244/07283
2. 34-089-23677-0014
3. 103 000 000
4. American Well Management Company
5. Banks No 1
6.
7. Licking OH
8. 18.0 million cubic feet
9. October 26, 1979
10.
1. 80-04245/07284
2. 34-053-20448-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Walter Lane Jr #1
6.
7. Gallia OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04246/07285
2. 34-053-20420-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. Hager-Leach #1
6.
7. Gallia OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04247/07286
2. 34-053-20419-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Bra
5. F Cameron Sands #1
6.
7. Gallia OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04248/07287
2. 34-115-21768-0014
3. 103 000 000
4. Future Energy Corporation
5. Donovan Lowe #2
6.
7. Morgan OH
8. 73.0 million cubic feet
9. October 26, 1979
10.

1. 80-04249/07290
2. 34-119-24907-0014
3. 103 000 000
4. Patrick T Donnelly d.v.a. Landprovest
5. L Andrew Robertson Jr #1
6.
7. Muskingum OH
8. 50.0 million cubic feet
9. October 26, 1979
10.

1. 80-04250/07293
2. 34-155-21240-0014
3. 103 000 000
4. Interstate Petroleum Company
5. Shones #1
6.
7. Trumbull OH
8. 10.0 million cubic feet
9. October 26, 1979
10.

1. 80-04251/07294
2. 34-167-24651-0014
3. 103 000 000
4. C W Riggs Inc
5. F Kalem #1
6. Reno Field
7. Washington OH
8. 11.0 million cubic feet
9. October 26, 1979
10.

1. 80-04252/07295
2. 34-127-24378-0014
3. 103 000 000
4. Reliance Management Co
5. Jerry Miller #1
6.
7. Perry OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04253/07296
2. 34-083-22643-0014
3. 103 000 000
4. Reliance Management Co
5. A M Elliott #2
6.
7. Knox OH
8. 10.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04254/07299
2. 34-151-22947-0014
3. 103 000 000
4. Belden & Blake and Co L P No. 72
5. C J Sweitzer Comm #1-874
6.
7. Stark OH
8. 36.5 million cubic feet
9. October 26, 1979
10.

1. 80-04255/07300
2. 34-151-23057-0014
3. 103 000 000
4. Belden & Blake and Co L P No. 72
5. A & B Lapp #1-901
6.
7. Stark OH
8. 36.5 million cubic feet
9. October 26, 1979
10.

1. 80-04256/07301
2. 34-157-23392-0014
3. 103 000 000
4. Belden & Blake and Co L P No. 72
5. Fry-Angle #4-902
6.
7. Tuscarawas OH
8. 36.5 million cubic feet
9. October 26, 1979
10.

1. 80-04257/07302
2. 34-151-23055-0014
3. 103 000 000
4. Belden & Blake and Co L P No. 72
5. G & R Mountz Comm #1-905
6.
7. Stark OH
8. 36.5 million cubic feet
9. October 26, 1979
10.

1. 80-04258/07303
2. 34-151-23054-0014
3. 103 000 000
4. Belden & Blake and Co L P No. 72
5. R & M Merry #1-907
6.
7. Stark OH
8. 36.5 million cubic feet
9. October 26, 1979
10.

1. 80-04259/07304
2. 34-059-22519-0014
3. 103 000 000
4. William N Tipka
5. Cunningham #2
6.
7. Guernsey OH
8. 30.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04260/07305
2. 34-169-22161-0014
3. 103 000 000
4. Petroleum Securities FD 1978 Comb P
5. Rice-Dunham Unit #1
6. Moreland Field Extension
7. Wayne OH
8. 27.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04261/07306
2. 34-169-22151-0014
3. 103 000 000
4. Petroleum Securities FD 1978 Comb
5. Dan T Hostetler #2
6. Moreland Field Extension
7. Wayne OH
8. 18.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04262/07307
2. 34-155-21305-0014
3. 103 000 000
4. Berea Oil and Gas Corp
5. Builders Association Unit #1
6.
7. Trumbull OH
8. 36.5 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04263/07308
2. 34-127-24303-0014
3. 103 000 000
4. The Oxford Oil Co
5. Glenn Gordon #3
6.
7. Perry OH
8. 9.0 million cubic feet
9. October 26, 1979
10.

1. 80-04264/07309
2. 34-151-22926-0014
3. 103 000 000
4. New Frontier Exploration Inc
5. Grimes-Ganslein Unit #1
6.
7. Stark OH
8. 26.0 million cubic feet
9. October 26, 1979
10. Columbia Gas of Ohio Inc

1. 80-04265/01606
2. 34-009-21171-0014
3. 108 000 000
4. Joseph J Mihelic
5. Morris #2
6.
7. Athens OH
8. 1.1 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04266/01610
2. 34-009-21509-0014
3. 108 000 000
4. Joseph J Mihelic
5. Morris #3
6.
7. Athens OH
8. 1.1 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04267/01611
2. 34-009-00790-0014
3. 108 000 000
4. Joseph J Mihelic
5. Morris #1
6.
7. Athens OH
8. 1.1 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04268/01651
2. 34-009-20830-0014
3. 108 000 000
4. Joseph J Mihelic
5. Linscott #2
6.
7. Athens OH
8. 2.2 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04269/01652
2. 34-009-21323-0014
3. 108 000 000
4. Joseph J Mihelic
5. Linscott #3
6.
7. Athens OH
8. 2.2 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04270/01653
2. 34-009-20472-0014
3. 108 000 000
4. Joseph J Mihelic
5. Linscott #1
6.
7. Athens OH
8. 2.2 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04271/02328
2. 34-031-21742-0014
3. 108 000 000
4. John C Mason
5. Clarence & May Holt 5A

6.
7. Coshocton OH
8. 1.5 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04272/02332
2. 34-031-22623-0014
3. 108 000 000
4. John C Mason
5. Thomas Borden #1
6.
7. Coshocton OH
8. 15.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04273/02352
2. 34-075-21404-0014
3. 108 000 000
4. John C Mason
5. Woodrow W Johnson #1
6.
7. Holmes OH
8. 4.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04274/05340
2. 34-009-21504-0014
3. 108 000 000
4. Joseph J Mihelic
5. Skinner #1
6.
7. Athens OH
8. 1.1 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp
1. 80-04275/06352
2. 34-007-20423-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Joyce #1
6. Lenox
7. Ashtabula OH
8. 1.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04276/06353
2. 34-007-20429-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Simon #1
6. Lenox
7. Ashtabula OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04277/06354
2. 34-007-20472-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Willoughby #1
6. Lenox
7. Ashtabula OH
8. 1.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04278/06356
2. 34-007-20401-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Prescott #1
6. Lenox
7. Ashtabula OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04279/06358
2. 34-007-20491-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Gage #1
6. Lenox
7. Ashtabula OH
8. 3.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04280/06359
2. 34-007-20481-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Kostey #1
6. Lenox
7. Ashtabula OH
8. 2.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04281/06360
2. 34-007-20439-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Hayford #1
6. Lenox
7. Ashtabula OH
8. 5.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04282/06361
2. 34-133-21158-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Schwan #2
6. Freedom Twp & Windham Twp
7. Portage OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04283/06362
2. 34-133-21044-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. King-Adams Unit #1
6. Freedom Twp & Windham Twp
7. Portage OH
8. 8.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04284/06363
2. 34-133-20901-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Ruffing #1
6. Freedom Twp & Windham Twp
7. Portage OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04285/06369
2. 34-007-20464-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Blackburn #1
6. Lenox
7. Ashtabula OH
8. 5.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04286/06370
2. 34-007-20450-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Turk-Scott #1
6. Lenox
7. Ashtabula OH
8. 11.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04287/06371
2. 34-007-20459-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Webb #1
6. Lenox
7. Ashtabula OH
8. 3.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04288/06392
2. 34-007-20229-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Hamper #229
6. Lenox
7. Ashtabula OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04289/06393
2. 34-007-20223-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Lesko #1
6. Lenox
7. Ashtabula OH
8. 8.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04290/06395
2. 34-007-20218-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Springer #1
6. Lenox
7. Ashtabula OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04291/06410
2. 34-007-20460-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Bailey #1
6. Lenox
7. Ashtabula OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04292/06411
2. 34-007-20452-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Vandevender #1
6. Lenox
7. Ashtabula OH
8. 3.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04293/06412
2. 34-007-20276-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Dietrich #1
6. Lenox
7. Ashtabula OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04294/06413
2. 34-007-20304-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Dietrich #2
6. Lenox
7. Ashtabula OH
8. 10.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04295/06414
2. 34-007-20266-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Dietrich #5
6. Lenox
7. Ashtabula OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04296/06415
2. 34-007-20262-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Dixon #1
6. Lenox
7. Ashtabula OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04297/06416
2. 34-133-20902-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Schwan #1
6. Freedom Twp & Windham Twp
7. Portage OH
8. 8.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04298/06417
2. 34-007-20306-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Fryan #1
6. Lenox
7. Ashtabula OH
8. 22.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04299/06418
2. 34-007-20254-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Lathan #1
6. Lenox
7. Ashtabula OH
8. 15.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04300/06419
2. 34-007-20265-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Long #2
6. Lenox
7. Ashtabula OH
8. 3.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04301/06420
2. 34-007-20286-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Roulston #1
6. Lenox
7. Ashtabula OH
8. 4.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04302/06421
2. 34-007-20347-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Roulston #2
6. Lenox
7. Ashtabula OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04303/06423
2. 34-007-20277-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Supplee #1
6. Lenox
7. Ashtabula OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04304/06424
2. 34-007-20231-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Mansfield Dietrich #231
6. Lenox
7. Ashtabula OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04305/06425
2. 34-007-20225-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Mansfield-Trenchan #1
6. Lenox
7. Ashtabula OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04306/06426
2. 34-007-20217-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Remelius #1
6. Lenox
7. Ashtabula OH
8. 12.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04307/06427
2. 34-007-20270-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Remelius #2
6. Lenox
7. Ashtabula OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04308/06428
2. 34-007-20273-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Remelius #3
6. Lenox
7. Ashtabula OH
8. 20.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04309/06429
2. 34-007-20226-0014
3. 108 000 000
4. Stark Oilfield Services Inc
5. Carter #226
6. Lenox
7. Ashtabula OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co

1. 80-04310/06653
2. 34-127-24341-0014
3. 103 000 000
4. L&M Petroleum
5. Yost #1
6.
7. Perry OH
8. 7.3 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04311/06654
2. 34-127-24340-0014
3. 103 000 000
4. L&M Petroleum
5. Large #1
6.
7. Perry OH
8. 7.3 million cubic feet
9. October 26, 1979
10. Columbia Gas Trans Corp

1. 80-04312/06831
2. 34-031-21995-0014
3. 102 000 000
4. Jerry Moore Inc
5. Huber A Brenly Unit #1
6. Keene
7. Coshocton OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission

1. 80-04313/06842
2. 34-029-20746-0014
3. 103 000 000
4. H & W Energy
5. Csonka Brothers #1
6.
7. Columbiana OH
8. 25.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transo Corp

1. 80-04314/06990
2. 34-099-21186-0014
3. 103 000 000
4. H & W Energy
5. J B Keeler #1
6.
7. Mahoning OH
8. 25.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp

1. 80-04315/06997
2. 34-133-21988-0014
3. 103 000 000
4. Viking Resources Corporation
5. Harbaugh #4
6.
7. Portage OH
8. 30.0 million cubic feet
9. October 26, 1979
10.

1. 80-04316/07008
2. 34-155-20609-0014
3. 103 000 000
4. Superior Petroleum Services Inc
5. Mayer #1

6.
7. Trumball OH
8. .0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04317/07132
2. 34-133-21047-0014
3. 103 000 000
4. Perkins Drilling Inc
5. Hunter #1
6.
7. Portage OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04318/07136
2. 34-087-23614-0014
3. 103 000 000
4. William V Cantlin
5. Odonnell #1-A
6.
7. Licking OH
8. 10.0 million cubic feet
9. October 26, 1979
10.
1. 80-04319/07137
2. 34-119-24666-0014
3. 103 000 000
4. The Benatty Corporation
5. Beatty-Fouts Unit #1
6.
7. Muskingum OH
8. 25.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04320/07142
2. 34-059-22609-0014
3. 103 000 000
4. Pominex Inc
5. Byrne-Schrader U #1
6.
7. Guernsey OH
8. 10.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04321/07143
2. 34-059-22595-0014
3. 103 000 000
4. Pominex Inc
5. Byrne-Schrader U #3
6.
7. Guernsey OH
8. 10.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04322/07144
2. 34-059-22608-0014
3. 103 000 000
4. Pominex Inc
5. #1 Albert Cepec
6.
7. Guernsey OH
8. 10.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04323/07145
2. 34-007-20962-0014
3. 103 000 000
4. Pominex Inc
5. #1 Gladys Knapp
6.
7. Ashtabula OH
8. 20.0 million cubic feet
9. October 26, 1979
10. Inland Drillin Company
1. 80-04324/07153
2. 34-115-21525-0014
3. 103 000 000
4. The Oxford Oil Co
5. Russell McNeal #1
6.
7. Morgan OH
8. 9.0 million cubic feet
9. October 26, 1979
10.
1. 80-04325/07154
2. 34-031-23475-0014
3. 103 000 000
4. The Oxford Oil Co
5. R E Vanwinkle #3
6.
7. Coshocton OH
8. 9.0 million cubic feet
9. October 26, 1979
10.
1. 80-04326/07155
2. 34-089-23374-0014
3. 103 000 000
4. The Oxford Oil Co
5. Barrick-Walcutt #2
6.
7. Licking OH
8. 9.0 million cubic feet
9. October 26, 1979
10.
1. 80-04327/07156
2. 34-127-24299-0014
3. 103 000 000
4. The Oxford Oil Co
5. James L Wilson #1
6.
7. Perry OH
8. 9.0 million cubic feet
9. October 26, 1979
10.
1. 80-04328/071157
2. 34-059-22518-0014
3. 103 000 000
4. William N Tipka
5. Ida Vincenzo No. 2
6.
7. Guernsey, OH
8. 31.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co
1. 80-04329/07158
2. 34-151-22989-0014
3. 103 000 000
4. DLM Gas & Oil Company
5. Grimminger No. 2
6.
7. Stark, OH
8. 7.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co, Mondie Forge Co Inc
1. 80-04330/07159
2. 34-151-23003-0014
3. 103 000 000
4. DLM Gas & Oil Company
5. K Blim No. 2
6.
7. Stark, OH
8. 9.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company, Mondie Forge Co Inc
1. 80-04331/07160
2. 34-151-23001-0014
3. 103 000 000
4. DLM Gas & Oil Company
5. K Blim No. 1
6.
7. Starm, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co, Mondie Forge Co Inc
1. 80-04332/07161
2. 34-151-22988-0014
3. 103 000 000
4. DLM Gas & Oil Company
5. D & J Albright #1
6.
7. Stark, OH
8. 6.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Co, Mondie forge Co Inc
1. 80-04333/07162
2. 34-121-22138-0014
3. 103 000 000
4. The Benatty Corporation
5. L Dickenson #1
6.
7. Noble, OH
8. 25.0 million cubic feet
9. October 26, 1979
10. East OHio Gas Company
1. 80-04334/07163
2. 34-169-22145-0014
3. 103 000 000
4. Buckeye Oil Producing Co
5. Willour #2
6.
7. Wayne, OH
8. 14.0 million cubic feet
9. October 26, 1979
10. Berman Shafer Operating Co
1. 80-04335/07164
2. 34-083-22628-0034
3. 103 000 000
4. Reliance Management Co
5. A M Elliott #1
6.
7. Knox, OH
8. 10.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04336/07165
2. 34-053-20410-0014
3. 103 000 000
4. R Gene Brasel also d.b.a. Brasel & Brasel
5. John R Fe No. 2
6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04337/07166
2. 34-053-20371-0014
3. 103 000 000
4. R Gene Brasel-d.b.a. Brasel & Brasel
5. Fred C Sisson No. 1
6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04338/07167
2. 34-053-20413-0014
3. 103 000 000
4. R Gene Brasel-d.b.a. Brasel & Brasel
5. Harlan Athey No. 1
6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 26, 1979

10. Columbia Gas Transmission Corp
1. 80-04339/07169
2. 34-157-23383-0014
3. 103 000 000
4. K S T Oil & Gas Co Inc
5. John Edward Fowler #1
6.
7. Tuscarawas, OH
8. 36.0 million cubic feet
9. October 26, 1979
10. East OHio Gas Co
1. 80-04340/07170
2. 34-133-21927-0014
3. 103 000 000
4. Jud Noble and Associates Inc
5. J Hall #1
6.
7. Portage, OH
8. 20.0 million cubic feet
9. October 26, 1979
10. East OHio Gas Co
1. 80-04341/07172
2. 34-031-23358-0014
3. 103 000 000
4. Jerry Moore Inc
5. Doris Shrimplin No 1
6. Warsaw
7. Coshocton, OH
8. 5.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission
1. 80-04342/07173
2. 34-089-23637-0014
3. 103 000 000
4. American Well Management Company
5. Jones No 1
6.
7. Licking, OH
8. 18.0 million cubic feet
9. October 26, 1979
10.
1. 80-04343/07176
2. 34-059-22312-0014
3. 103 000 000
4. Oneal Productions Inc
5. Wilford Hill #1
6.
7. Guernsey, OH
8. .0 million cubic feet
9. October 26, 1979
10. Columbia Gas Transmission Corp
1. 80-04344/07177
2. 34-133-22001-0014
3. 103 000 000
4. Viking Resources Corporation
5. G Burkey Sr #4
6.
7. Portage, OH
8. 30.0 million cubic feet
9. October 26, 1979
10.
1. 80-04345/07178
2. 34-133-21939-0014
3. 103 000 000
4. Viking Resources Corporation
5. T Edwards #1
6.
7. Portage, OH
8. 30.0 million cubic feet
9. October 26, 1979
10.
1. 80-04346/07179
2. 34-133-21810-0014
3. 103 000 000
4. Viking Resources Corporation
5. Hampton Unit No. 2
6.
7. Portage, OH
8. 30.0 million cubic feet
9. October 26, 1979
10.
1. 80-04347/07180
2. 34-059-22476-0014
3. 103 000 000
4. New Frontier Exploration Inc
5. R L Shepherd No. 1
6.
7. Guernsey, OH
8. 22.0 million cubic feet
9. October 26, 1979
10. East Ohio Gas Company
1. 80-04348/07181
2. 34-121-22142-0014
3. 103 000 000
4. The Benatty Corporation
5. J Carrick No. 2
6.
7. Noble, OH
8. 25.0 million cubic feet
9. October 26, 1979
10. The East Ohio Gas Company
1. 80-04349/07182
2. 34-031-23566-0014
3. 103 000 000
4. W E Shrider Co
5. Forrest Huff No. 1
6.
7. Coshoston, OH
8. 3.0 million cubic feet
9. October 26, 1979
10. National Gas & Oil Corp
1. 80-04350/07183
2. 34-127-24318-0014
3. 103 000 000
4. W E Shrider Co
5. Henry Bourne No. 3
6.
7. Perry, OH
8. 3.0 million cubic feet
9. October 26, 1979
10. National Gas & Oil Corp
1. 80-04351/07184
2. 34-073-22137-0014
3. 103 000 000
4. W E Shrider Co
5. Poling Heirs No. 2
6.
7. Hocking, OH
8. 3.0 million cubic feet
9. October 26, 1979
10. Paramount Transmission Corp
1. 80-04352/07185
2. 34-155-21091-0014
3. 103 000 000
4. Pyramid Oil & Gas Company
5. Craft Unit No. 1
6.
7. Trumbull, OH
8. 30.0 million cubic feet
9. October 26, 1979
10.
1. 80-04353/07190
2. 34-009-21974-0014
3. 103 000 000
4. R Wolfe Oil & Gas
5. Linscott No. 1
6.
7. Athens, OH
8. 2.0 million cubic feet
9. October 26, 1979
10. Columbia Gas Company

Oklahoma Corporation Commission
1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 80-04391
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Custer B No. 1
6. S E Como
7. Beaver, OK
8. 2.8 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co
1. 80-04392/00338
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Loesch-A No. 5
6. S E Como
7. Beaver, OK
8. 2.0 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co
1. 80-04393/00337
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Sunray—Phillips No. 1
6. S E Como—Upper Morrow
7. Beaver, OK
8. 7.5 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co
1. 80-04394/00336
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Flock-A No. 2
6. S E Como
7. Beaver, OK
8. 3.0 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co
1. 80-04395/00335
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Custer B-2 No. 2
6. S E Como
7. Beaver, OK
8. 1.2 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline Co
1. 80-04396/00534
2. 35-061-20230-0000
3. 102 000 000
4. Nelson Petroleum Company
5. W W Couch No. 1-6 #061-56234
6. N W Quinton
7. Haskell, OK
8. 150.0 million cubic feet
9. October 26, 1979
10. Arkansas Louisiana Gas Co
1. 80-04397/00533

2. 35-061-20242-0000
3. 102 000 000
4. Nelson Petroleum Company
5. H U Eakle No. 1-7 #061-56235
6. N W Quinton
7. Haskell, OK
8. 300.0 million cubic feet
9. October 26, 1979
10. Arkansas Louisiana Gas Co

1. 80-04398/00532
2. 35-121-20535-0000
3. 103 000 000
4. Nelson Petroleum Company
5. Leo Monks No. 1-14 #121-53639
6. Russellville
7. Pittsburg, OK
8. 365.0 million cubic feet
9. October 26, 1979
10. Gas Transmission Co

1. 80-04399/00531
2. 35-121-20590-0000
3. 103 000 000
4. Nelson Petroleum Company
5. H A Chapin Jr 1-16 #121-55630
6. Russellville
7. Pittsburg, OK
8. 365.0 million cubic feet
9. October 26, 1979
10. Gas Transmission Company

1. 80-04400/00530
2. 35-121-20552-0000
3. 103 000 000
4. Nelson Petroleum Company
5. Starr No 1-15 121-54773
6. Russellville
7. Pittsburg OK
8. 365.0 million cubic feet
9. October 26, 1979
10. Gas Transmission Co

1. 80-04401/00528
2. 35-121-20597-0000
3. 102 000 000
4. Nelson Petroleum Company
5. M G Eakle 1-12 #121-56236
6. Russellville
7. Pittsburg OK
8. 160.0 million cubic feet
9. October 26, 1979
10. Arkansas Louisiana Gas Co

1. 80-04402/00400
2. 35-139-20981-0000
3. 103 000 000
4. Anadarko Production Co
5. Bawbell A No 2
6. Postle Hough
7. Texas OK
8. 43.0 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline Co

1. 80-04403/00398
2. 35-139-21012-0000
3. 103 000 000
4. Anadarko Production Co
5. Hawkins B No 1—Cherokee
6. Goff Creek
7. Texas OK
8. 72.0 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline Co

1. 80-04404/00359
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Cross A No 1
6. S E Como
7. Beaver OK
8. 1.0 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co

1. 80-04405/00344
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Flock—A No 1
6. S E Como
7. Beaver OK
8. 5.5 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co

1. 80-04406/00345
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Loesch—A No 1
6. S E Como
7. Beaver OK
8. 1.6 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co

1. 80-04407/00342
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Harper-Rush-A No 2
6. S E Como
7. Beaver OK
8. 1.8 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co

1. 80-04408/00551
2. 35-049-35858-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Hart Unit No J-31
6. Golden Trend
7. Garvin OK
8. .5 million cubic feet
9. October 26, 1979
10. Warren Petroleum Corp

1. 80-04409/00555
2. 35-049-40154-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Hart Unit No H-07
6. Golden Trend
7. Garvin OK
8. .6 million cubic feet
9. October 26, 1979
10. Warren Petroleum Corp

1. 80-04410/00697
2. 35-073-21264-0000
3. 108 000 000 Denied
4. Petro Lewis Corporation
5. Richardson 34-1
6. Sooner Trend
7. Kingfisher-7865% Maj OK
8. 18.2 million cubic feet
9. October 26, 1979
10. Partnership Properties Co

1. 80-04411/00360
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Gilger-B No 1
6. S E Como
7. Beaver OK
8. 14.0 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline

1. 80-04412/00341
2. 35-007-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Custer A No 1
6. S E Como
7. Beaver OK
8. 2.5 million cubic feet
9. October 26, 1979
10. El Paso Natural Gas Co

1. 80-04413/00452
2. 35-029-20176-0000
3. 103 000 000
4. Continental Oil Company
5. Shores 2-11
6. S Ashland
7. Coal OK
8. 194.5 million cubic feet
9. October 26, 1979
10. O G & E

1. 80-04414/00494
2. 35-093-21313-0000
3. 103 000 000
4. Continental Oil Company
5. Woodring No 1
6. NE Seiling
7. Major OK
8. 34.3 million cubic feet
9. October 26, 1979
10. Delhi Gas Pipeline Corporation

1. 80-04415/00306
2. 35-059-00000-0000
3. 108 000 000
4. W T Fail
5. Klinger #1
6. Laverne-Mocane
7. Harper OK
8. 20.4 million cubic feet
9. October 26, 1979
10. Colorado Interstate Gas Company

1. 80-04416/00369
2. 35-047-21731-0000
3. 103 000 000
4. Birchall Petroleum Inc
5. Birchall Hoisington Well No 22-1
6. Sooner Trend
7. Garfield OK
8. 91.3 million cubic feet
9. October 26, 1979
10. Cities Service Gas Company

1. 80-04417/00503
2. 35-071-20809-0000
3. 103 000 000
4. Chase Exploration Corp
5. Hahn #1-25
6.
7. Kay OK
8. 31.8 million cubic feet
9. October 26, 1979
10. Cities Service Gas Company, Chas Gathering Systems Inc

1. 80-04418/00442
2. 35-047-21737-0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Airport #1
6. S E Enid
7. Garfield OK
8. 87.0 million cubic feet
9. October 26, 1979
10.

1. 80-04419/00397
2. 35-139-21101-0000
3. 103 000 000
4. Anadarko Production Co
5. Keenan B No 1

6. North Unity
7. Texas OK
8. 120.0 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline Co

1. 80-04420/00489
2. 35-017-20888-0000
3. 103 000 000
4. Continental Oil Company
5. C Siler #1
6. Richland
7. Canadian OK
8. 99.2 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04421/00488
2. 35-017-20843-0000
3. 103 000 000
4. Continental Oil Company
5. Mach B #1
6. Richland
7. Canadian OK
8. 66.1 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04422/00487
2. 35-017-20887-0000
3. 103 000 000
4. Continental Oil Company
5. E Drabek 12-1
6. Richland
7. Canadian OK
8. 180.7 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Delhi Gas Corporation

1. 80-04423/00485
2. 35-017-21058-0000
3. 103 000 000
4. Continental Oil Company
5. Alberts #1
6. Richland Field
7. Canadian OK
8. 309.2 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Delhi Gas Corporation

1. 80-04424/00948
2. 35-139-00000-0000
3. 108 000 000
4. Graham-Michaelis Corp
5. State of Oklahoma #1-8
6. Guymon-Hugoton
7. Texas OK
8. 20.5 million cubic feet
9. October 26, 1979
10. Phillips Petroleum Co

1. 80-04425/00552
2. 35-049-40199-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Hart Unit No G-04
6. Golden Trend
7. Garvin OK
8. .6 million cubic feet
9. October 26, 1979
10. Warren Petroleum Corp

1. 80-04426/00483
2. 35-017-20828-0000
3. 103 000 000
4. Continental Oil Company
5. Pendleton #1
6. Richland
7. Canadian OK
8. 188.3 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04427/00406
2. 35-007-21557-0000
3. 103 000 000
4. Braxton Oil and Gas Corp
5. Barby No 2
6. Mocane-Laverne
7. Beaver OK
8. 73.0 million cubic feet
9. October 26, 1979
10. Northern Natural Gas Co

1. 80-04428/00481
2. 35-017-20782-0000
3. 103 000 000
4. Continental Oil Company
5. E Baker 6-1
6. N Richland
7. Canadian OK
8. 143.1 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04429/00490
2. 35-017-20910-0000
3. 103 000 000
4. Continental Oil Company
5. A Smith 12-1
6. Richland
7. Canadian OK
8. 99.2 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04430/00475
2. 35-017-21019-0000
3. 103 000 000
4. Continental Oil Company
5. Briscoe 5 #2
6. Richland
7. Canadian OK
8. 63.9 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Phillips Petroleum Co

1. 80-04431/00476
2. 35-017-21012-0000
3. 103 000 000
4. Continental Oil Company
5. E Baker 6-2
6. Richland
7. Canadian OK
8. 210.6 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Ga Company

1. 80-04432/00477
2. 35-017-20826-0000
3. 103 000 000
4. Continental Oil Company
5. L Briscoe 8-1
6. Richland
7. Canadian OK
8. 146.0 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Phillips Petroleum Co

1. 80-04433/00478
2. 35-017-21109-0000
3. 103 000 000
4. Continental Oil Company
5. Briscoe 5 #3
6. Richland
7. Canadian OK
8. 100.4 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Phillips Petroleum Co

1. 80-04434/00479
2. 35-017-20827-0000
3. 103 000 000
4. Continental Oil Company
5. Broderderp 6-1
6. Richland
7. Canadian OK
8. 39.1 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04435/00521
2. 35-019-21754-0000
3. 103 000 000
4. Gray Operating Company
5. Dudley #1
6. South Wilson
7. Carter OK
8. 26.0 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04436/00627
2. 35-007-21287-0000
3. 106 000 000
4. Elder & Vaughn
5. Butcher No 1
6.
7. Beaver OK
8. 15.0 million cubic feet
9. October 26, 1979
10. Panhandle Eastern Pipeline Co

1. 80-04437/00455
2. 35-135-20053-0000
3. 103 000 000
4. Jim L Hanna dba Hanna Oil & Gas Co
5. Kay Rogers #1
6. Paw Paw NE
7. Sequoyah OK
8. 187.0 million cubic feet
9. October 26, 1979
10. Arkansas Oklahoma Gas Company

1. 80-04438/00493
2. 35-043-20966-0000
3. 103 000 000
4. Ennex Production Company
5. No 1 Blumer
6. Lenora
7. Dewey OK
8. 248.0 million cubic feet
9. October 26, 1979
10.

1. 80-04439/00454
2. 35-079-20283-0000
3. 103 000 000
4. Jim L Hanna dba Hanna Oil & Gas Co
5. Ellen Christian #1
6. West Cedars
7. Leflore OK
8. 200.0 million cubic feet
9. October 26, 1979
10.

1. 80-04440/00482
2. 35-017-20914-0000
3. 103 000 000
4. Continental Oil Company
5. Krshka 7-1
6. Richland
7. Canadian OK
8. 248.6 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company

1. 80-04441/00484
2. 35-017-20947-0000
3. 103 000 000
4. Continental Oil Company
5. W. Davis #1

6. Richland
7. Canadian OK
8. 80.7 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company
1. 80-04442/00486
2. 35-017-20984-0000
3. 103 000 000
4. Continental Oil Company
5. C Mach #1
6. Richland
7. Canadian OK
8. 516.5 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company
1. 80-04443/00527
2. 35-121-20505-0000
3. 103 000 000
4. Nelson Petroleum Company
5. Rachel Timmerman No 1-15 #121-52912
6. N E Blocker
7. Pittsburg OK
8. 50.0 million cubic feet
9. October 26, 1979
10. Gas Transmission Co
1. 80-04444/00116
2. 35-019-00000-0000
3. 108 000 000
4. Moran Bros Inc
5. Sadler No 1
6. North Healdon
7. Carter OK
8. 18.0 million cubic feet
9. October 26, 1979
10. Aminoil USA Inc
1. 80-04445/00553
2. 35-049-40152-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Hart Unit No G-08
6. Golden Trend
7. Garvin OK
8. .4 million cubic feet
9. October 26, 1979
10. Warren Petroleum Corp
1. 80-04446/00554
2. 35-049-40048-0000
3. 108 000 000
4. Phillips Petroleum Co
5. Hart Unit No G-12
6. Golden Trend
7. Garvin OK
8. .4 million cubic feet
9. October 26, 1979
10. Warren Petroleum Co
1. 80-04447/00548
2. 35-137-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Doyle No 42-03
6. Doyle
7. Stephens OK
8. 3.8 million cubic feet
9. October 26, 1979
10. Aminoil USA Inc
1. 80-04448/00549
2. 35-137-01472-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Doyle No 13-04A
6. Doyle
7. Stephens OK
8. 1.3 million cubic feet
9. October 26, 1979
10. Aminoil USA Inc
1. 80-04449/00480
2. 35-017-20993-0000
3. 103 000 000
4. Continental Oil Company
5. Briscoe 5 #1
6. Richland
7. Canadian OK
8. 98.9 million cubic feet
9. October 26, 1979
10. Oklahoma Natural Gas Company Phillips Petroleum Co
1. 80-04450/00303
2. 35-051-20046-0000
3. 108 000 000
4. Phillips Petroleum Company
5. McVey-B #1
6. N E Verden
7. Grady OK
8. 4.0 million cubic feet
9. October 26, 1979
10. Mobil Oil Corporation
1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area No.
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 80-04202/OK-47-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Jones #1
6. E Tonkawa
7. Kay OK
8. 6.5 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04203/OK-48-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Big Goose #1
6. E Tonkawa
7. Kay OK
8. 11.3 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04204/OK-49-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Big Goose #2
6. E Tonkawa
7. Kay OK
8. 4.2 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04205/OK-50-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Martha #1
6. E Tonkawa
7. Kay OK
8. 4.0 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04206/OK-51-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Martha #2
6. E Tonkawa
7. Kay OK
8. 17.9 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04207/OK-52-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Martha #3
6. E Tonkawa
7. Kay OK
8. 14.2 million cubic feet
9. October 26, 1979
10. Sun Production Company
1. 80-04208/OK-53-9
2. 35-071-00000-0000-0
3. 108 000 000
4. Ronco Energy Resources
5. Martha #4
6. E Tonkawa
7. Kay OK
8. 9.1 million cubic feet
9. October 26, 1979
10. Sun Production Company

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capital Street, N.E., Washington, D.C. 20426. Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 17, 1979.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36804 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES79-62]

Gulf States Utilities Co.; Supplemental Order Authorizing the Issuance of First Mortgage Bonds and Granting Exemption From Competitive Bidding

November 21, 1979.

On August 30, 1979, Gulf States Utilities Company (Applicant) filed an application, along with a request for authorization to engage in negotiations for the sale of Common Stock, with this Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue up to 4,000,000 shares of Common Stock, no par value via negotiated placement, with an estimated market value of $52 million, and $75 million of First Mortgage Bonds due 2009, via competitive bidding.

By letter dated September 11, 1979, the Office of Chief Accountant granted the Applicant permission to engage in negotiations for the proposed issuance of Common Stock.

On October 3, 1979, Applicant filed its results of negotiation with this Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue up to 4,000,000 shares of Common Stock, no par value via negotiated placement.

On October 19, 1979, the Commission issued its Order authorizing the Applicant to issue up to 4,000,000 shares of Common Stock, no par value, via negotiated placement and $75 million of First Mortgage Bonds, due 2009, via competitive bidding.

By amendment filed October 23, 1979, Applicant requested authorization to engage in negotiations for the placement of the $75 million of First Mortgage Bonds due to current market conditions. By letter dated October 26, 1979, the Office of Chief Accountant granted the Applicant permission to engage in negotiations.

On November 7, 1979, Applicant filed its results of negotiations and requested authority to issue up to $75 million of First Mortgage Bonds via negotiated placement.

After receiving permission from the Office of Chief Accountant to negotiate, Applicant solicited and received proposals for placement of the Bonds from four underwriting firms. Merrill Lynch Pierce Fenner & Smith; Kidder Peabody & Co., Inc.; Salomon Brothers; and Blyth Eastman Dillion & Co., all submitting the same underwriting spread of .875%. Applicant proposes to select Blyth Eastman Dillion & Co. as the lead underwriter with the other three acting as co-managers.

Written notice of the application has been given to the Louisiana Public Service Commission, Texas Public Utility Commission and to the Governors of the aforementioned States. Notice has also been given by publication in the Federal Register, stating that any person desiring to be heard or to make any protest with reference to the application should on or before November 13, 1979, file petitions or protests with the Federal Energy Regulatory Commission, Washington, D.C. 20426. No petition, protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission.

(2) The proposed issue and sale of First Mortgage Bonds, as described above, will constitute an issue of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved is regulated by a state commission within the meaning of Section 204(f) of the Act; and the proposed issue of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issue of First Mortgage Bonds from the competitive bidding requirements of Section 34.1a(a) and (b) of the Commission's Regulations under the Federal Power Act.

The Commission orders:

(A) The proposed issuance and sale of up to $75 million of First Mortgage Bonds, upon the terms and conditions and for the purposes specified in the application, all as described above, is hereby authorized subject to the provisions of this Order.

(B) The proposed issuance and sale of First Mortgage Bonds is exempted from compliance with the competitive bidding procedures of Section 34.1a(a) and (b) of the Regulations under the Federal Power Act.

(C) The proposed issuance and sale of up to $75 million principal amount of First Mortgage Bonds by negotiated placement may be completed without further action by this Commission, provided the amount of any and all compensation to be paid for the placement of the Bonds is in accordance with the terms and conditions contained in the Application.

(D) Applicant shall amend the application pursuant to the requirements of Section 34.9(c) of the Commission's Regulations under the Federal Power Act within ten days after the consummation of the above mentioned transactions.

(E) This authorization shall expire within 90 days from the date of issuance of this order unless the transactions herein authorized are consummated.

(F) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36808 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-13]

Gulf States Utilities Co.; Application for Exemption

November 23, 1979.

Take notice that Gulf States Utilities Company (GSU), on November 1, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, GSU states that it should not be required to file the specified data for the following reasons:

GSU's systems for data collection and processing as "presently installed and adhered to were and are predicated upon the unusual characteristics of the classes of customer loads, geographic requirements and limitations, and the varied climatic influences, among other things, which of necessity must be considered in the instance of this Applicant. The data required under Section 133 of PURPA and, further by Part 290 of the Commission's regulations, are, in part, available. However, those portions not available and not within a reasonable degree of probability of becoming available within the designated filing period, to wit: sections and subsections 290.202(a); 290.205; 290.302(a)(11); 290.302(a)(16); 290.302(a)(17); 290.302(b) (15), (19), (20), (23) and (24) (i), (ii), and (iii); 290.303(a); 290.303(d); 290.303(e); 290.303(f); 290.303(g); 290.303(h); 290.303 (b), (i); 290.308; 290.402(e); 290.404; 290.405(a); 290.501 and 290.502, are of such character and are of such essentiality that their absence destroys any semblance of quality as to any submissible data and thereby vitiates the purposes of Section 133 of PURPA as the same is related to this Applicant."

Copies of the application for exemption are on file with the

Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 14, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33309 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP73-6]

Mississippi River Transmission Corp.; Instituting Review of "Initial Decision on Remand"

November 21, 1979.

By order of June 11, 1979,[1] we remanded an initial decision [2] then pending on exceptions before us to an administrative law judge for further proceedings in accordance with that order. On October 5, 1979 the judge issued an "Initial Decision on Remand" which is in the nature of a supplement to the earlier decision. No exceptions to this supplemental decision were filed. However, because of the relationship of the October 5 decision to the earlier one (which was returned for our consideration) we are instituting review of the October 5 decision pursuant to Section 1.30(d)(2) rather than letting it become final at this time. We expect to take both decisions up in the near future.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33310 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

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[1] *Columbia Gas Transmission Corporation, et al.*, Order Following 180-Day Suspension of Curtailment Proceedings To Permit Assessment of Effects of NGPA, Docket Nos. RP72-89, *et al.* (issued June 11, 1979).

[2] Initial Decision of the Presiding Administrative Law Judge Approving Curtailment Plan, Docket Nos. RP73-6 (issued July 26, 1976).

[Docket Nos. CP79-45, CP-204, and CP79-239; Docket No. CP79-295; and Docket No. CP79-288]

Natural Gas Pipeline Co. of America, et al.; Findings and Order After Statutory Hearing Issuing Certificates of Public Convenience and Necessity and Granting Petitions to Intervene

November 21, 1979.

On October 30, 1978, in Docket No. CP79-45, on March 7, 1979, as amended August 6, 1979, in Docket No. CP79-204, and on March 6, 1979, in Docket No. CP79-239, Natural Gas Pipeline Company of America (Natural)[1] filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain facilities, the transportation and/or exchange of natural gas, and the sale of natural gas. On March 7, 1979, as amended August 14, 1979, Colorado Interstate Gas Company (CIG) [2] filed in Docket No. CP79-205 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and/or exchange of natural gas with Natural. On April 26, 1979, Mountain Fuel Supply Company (Mountain Fuel)[3] filed in Docket No. CP79-288 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. Applicants' proposals are more fully set forth in the applications in these proceedings.

The proposals in these proceedings are part of the implementation of Natural's gas supply programs wherein Natural has sought gas outside of its historical supply area. In this effort, Natural has obtained commitments of gas reserves in the Rocky Mountain area which is remote from Natural's system but is in the area of CIG's system. Accordingly, to make these reserves available to its system, Natural has entered into a broad-area system exchange-transportation arrangement with CIG. The arrangement permits either party to attach its gas supplies to the other's system and, through an exchange, receive equivalent volumes into its own system. Since Natural is a customer of CIG, balancing of exchange volumes or receipt of transported volumes can be readily accommodated. Furthermore, since CIG's facilities are appropriately placed to assist Natural, future gas acquisitions by Natural or CIG may be incorporated into this arrangement without the need for separate agreements. In Docket No. CP79-45, under temporary certificate authorization to construct, but not to operate, Natural build a 61-mile, 10-inch pipeline from northeastern Colorado to CIG's system east of Denver.

Docket No. CP79-45

In Docket No. CP79-45, Natural proposes to construct and operate 61.4 miles of 10-inch transmission pipeline, 3,600 compressor horsepower, and other appurtenant facilities to attach gas acquired in Yuma and Washington Counties, Colorado. The line will connect to existing CIG facilities in Adams County, Colorado.[4]

Natural will purchase gas produced in the shallow Niobrara Chalk formation in Yuma and Washington Counties and from any other zones producing under contracted acreage available to it. Natural has acquired gas purchase commitments from the following producers.

Producer	Contract date	Dedicated acreage	FERC status
1. Joe Gray, T. J. Jeffery, Meridith Mallory, Jr., Howard Westerman	7/14/78	14,637.53	CS77-644
2. Niobrara Illuminating Gas Association	7/26/78	4,760.00	CS79-307
3. Stelbar Oil Corp., Inc., Ellis Petroleum Inc., Robert J. Gutru..	7/20/78	33,491.85	CS74-198
4. Shakespeare Oil Corp., Inc	7/13/78	5,432.96	CS79-272
5. Gideon Mayfield, B. H. Wierick	7/27/78	-1,830.99	*
6. The Sand Hill Society	7/26/78	12,122.29	CS79-308
7. John P. Lockridge, Clyde E. Thompson, Mountain Petroleum Corp	7/25/78	8,530.13	CS79-564
8. Voyageur Exploration Co., Becker Oil & Gas Co	7/25/78	6,435.23	CS78-442
Total		87,334.06	

*Producers have indicated that small producer certificate filings are being prepared and will be filed in the near future. Gas from this source should not flow until producer files for appropriate authorization.

In addition to the above commitments, NARMCO Incorporated, Natural's

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[1] Natural, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

[2] CIG, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

[3] Mountain Fuel, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the order of October 15, 1940, in Docket No. G-154 (2 FPC 288).

[4] Exchange deliveries by Natural and redeliveries by CIG would be accomplished under the authorizations requested in related Docket Nos. CP79-204 and CP79-205.

exploration and producing subsidiary, has acquired a substantial leasehold position on several areas which are located south of the area of interest. As a result, Natural has obtained preferential purchase rights on approximately 72,000 additional acres. Any reserves underlying this acreage will be available to augment the gas supply supporting the instant project.

Docket Nos. CP79-204 and CP79-205

In Docket Nos. CP79-204 and CP79-205 Natural and CIG propose a broad-area system transportation and/or exchange of natural gas. The two companies have entered into an agreement, dated December 28, 1978, providing for Natural to accept CIG volumes of gas in quantities of up to 80,000 Mcf per day and for CIG to accept deliveries of gas from Natural up to 75,000 Mcf per day. The agreement separates the exchange-transportation arrangement into two components: (1) the CIG system and Natural's Amarillo system; and (2) CIG's system and Natural's Gulf Coast system.

In the CIG/Natural-Amarillo system, the arrangement will be operated as an exchange on a gas-for-gas basis with monthly balancing for gas delivered into CIG's system or into Natural's Amarillo system. If, at the end of the month, any CIG volumes delivered into Natural's Amarillo system exceed the exchange volumes delivered by Natural, such volumes will be subject to Natural's overall transportation rate. Likewise, any Natural volumes delivered to CIG which are in excess of the exchange volumes delivered by CIG into Natural's Amarillo system will be subject to CIG's overall transportation rate. This portion of the agreement treats the party which delivers the excess volumes as receiving a transportation service and subjects these "out of balance" volumes to the appropriate transportation rate. Such "out of balance" volumes are to be redelivered by the "transporting" party during the following month.

In the CIG/Natural Gulf Coast system, any volumes delivered by CIG to Natural's Gulf Coast system will be treated solely as transportation gas and such volumes will have no effect on the deliveries being made under the CIG/Natural Amarillo system provisions. These volumes of gas are viewed as transportation gas because Natural's Gulf Coast system is currently utilized to near capacity in order to transport its own supplies and those of other pipelines.

In addition to the specified delivery points set forth in the appendix hereto, CIG and Natural are requesting blanket authorization to add new delivery points as needed without having to seek further certificate authorization as additional sources of supply become available under the proposed arrangement. The aggregate deliveries, however, will remain at the requested maximum levels of 75,000 Mcf per day by Natural to CIG and 80,000 Mcf per day by CIG to Natural. It is stated that any facilities required to establish these future delivery points will be constructed under budget-type authority or pursuant to separate requests for certificate authorization. Further, Natural and CIG will file annually with the Commission revisions to their respective appropriate FERC Gas Tariffs, identifying each delivery point and connected source of supply.

CIG will charge Natural for volumes transported a rate of 23.42 cents per Mcf as contained in its general rate proceeding in Docket No. RP79-1, which rate became effective April 1, 1979, subject to refund. Natural will charge CIG for its transportaton service 41.57 cents per Mcf as proposed in its rate proceeding in Docket No. RP78-78. That rate became effective December 1, 1978, subject to refund.

Docket No. CP79-288

In Docket No. CP79-288, Mountain Fuel proposes to provide a transportation and exchange service for Natural and CIG pursuant to a service agreement, dated October 3, 1978, whereunder Mountain Fuel will accept deliveries of gas by Natural of up to 20,000 Mcf per day on its existing intrastate system, identified as Mountain Fuel's Uintah Basin pipeline.[5] The gas to be transported is from Natural's acquired interests in the Bonanza area, Uintah County, Utah,[6] and once delivered into Mountain Fuel's system will be consumed entirely by Mountain Fuel's intrastate customers. Accordingly, since none of the gas delivered to Mountain Fuel by Natural will leave Utah, Mountain Fuel requests continued exemption from the Natural Gas Act of its Uintah Basin pipeline. Redeliveries of equivalent volumes (less volumes purchased by Mountain Fuel) are to be effected at Mountain Fuel's existing exchange point to CIG, the Kanda Exchange Point, in Sweetwater County, Wyoming.

Docket No. CP79-239

In Docket No. CP79-239, Natural proposes to sell a combined total of 25 percent of all gas delivered by Natural to Mountain Fuel from the Bonanza area of interest. CIG and Mountain Fuel have the option of purchasing 12.5 percent of said gas and any remaining share of the 12.5 percent not purchased by the other party. This proposed sale to CIG and Mountain Fuel is partial consideration for the transportation/exchange services provided by them with respect to the Bonanza area gas.

The gas to be sold to Mountain Fuel will be produced in Utah, transported through Mountain Fuel's non-jurisdictinal facilities as proposed in Docket No. CP79-288, and consumed entirely by Mountain Fuel's Utah customers. Accordingly, Natural's sale of the Bonanza gas to Mountain Fuel is considered non-jurisdictional and that portion of the application in Docket No. CP79-239 requesting authorization to make such sale shall be dismissed.[7]

The Bonanza gas to be sold to CIG and Mountain Fuel will be at a price based on the weighted average price of all gas purchased by Natural from Enserch Exploration Inc. (Enserch), which at this time the one agreement with Enserch calls for price of $1.736 per million Btu's. Added to the weighted average price of the gas is a proposed 10.0 cents per Mcf associated with Natural's cost of service incurred in operating gathering, measuring and dehydration facilities that Natural is installing under its budget authorization. The temporary certificate granted in Docket No. CI79-231 authorizing Enserch to make the sale to Natural advised that "In the event the purchaser (Natural) incurs costs associated with processing, dehydration, compression or other conditioning of the subject gas and seeks to include these costs in its rate base, the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate."

In Docket No. CP79-288 Mountain Fuel proposes to charge CIG and Natural for transporting the Bonaza gas through its nonjurisdictional facilities a rate of 13.22 cents and an additional 5.0 cents per Mcf for the compression of gas flowing through the Kanda Exchange Point. The 13.22 cents charge is based on the cost of service associated with Mountain Fuel's Uintah transmission facility and incorporates a 10.856

[5] The Uintah Basin pipeline was exempt, pursuant to Section 1(c) of the Natural Gas Act, from the provisions of the Act and the orders, rules and regulations thereunder by order issued August 6, 1964, in Docket No. CP64-221 (32 FPC 535).

[6] Enserch Exploration Inc. was authorized to sell Natural 100 percent of these reserves in Docket No. CI79-231.

[7] See the order issued January 26, 1977, in Docket Nos. CP75-37 and CP75-281 where, under essentially similar circumstances, CIG's request for authorization to sell gas to Mountain Fuel was dismissed.

percent rate of return as approved by the Utah Public Service Commission. The 5.0-cent compression charge is based on Mountain Fuel's related cost of service for operating the Kanda Exchange Point and was approved by order, issued February 12, 1979, in Docket No. CP75–37.

The facilities proposed to be constructed and operated in Docket No. CP79–45 will be for the Transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the proposed sales, transportation and/or exchange of natural gas in these proceedings will be in interstate commerce, subject to the jurisdiction of the Commission; therefore, said construction and operation, sales, transportation and/or exchange of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

The Commission finds that the order issued in Docket No. CP79–45 does not constitute a major Federal action having any significant effect on the quality of the human environment.

After due notice by publication in the Federal Register on November 22, 1978 (43 FR 54683) (Docket No. CP79–45), April 2, 1979 (44 FR 19234) and September 10, 1979 (44 FR 52736) (Docket No. CP79–204), April 2, 1979 (44 FR 19228) and September 11, 1979 (44 FR 52865) (Docket No. CP79–205), April 24, 1979 (44 FR 24146) (Docket No. CP79–239), and May 18, 1979 (44 FR 29154) (Docket No. CP79–288) the following petitions to intervene have been filed in these dockets:

Docket No. CP79–45

Colorado Interstate Gas Company
Panhandle Eastern Pipe Line Company
Central Illinois Light Company
Associated Natural Gas Company
Public Service Company of Colorado, Western Slope Gas Company and Cheyenne Light, Fuel and Power Company
Northern Indiana Public Service Company
Northwest Pipeline Corporation
Northern Illinois Gas Company

Docket No. CP79–204

Colorado Interstate Gas Company
Northwest Pipeline Company, supplemented August 13, 1979

Docket No. CP79–205

Public Service Company of Colorado, Western Slope Gas Company and Cheyenne Light, Fuel and Power Company
Northwest Pipeline Corporation

Docket No. CP79–239

Northwest Pipeline Corporation
Colorado Interstate Gas Company
Enserch Exploration, Inc.

Docket No. CP79–288

Colorado Interstate Gas Company
Enserch Exploration, Inc.
Northwest Pipeline Corporation

None of the above interveners requests a formal hearing in these proceedings. However, Northwest Pipeline Corporation (Northwest) states that four of the five sources of supply available to Natural in the Rocky Mountain area used to support the proposals in Docket Nos. CP79–204 and CP79–205 are included as support for the pending proceeding in *Trailblazer Pipeline Company, et al.*, in Docket No. CP79–80, *et al.* Northwest requests that the Commission condition the order issued in Docket No. CP79–204 as follows:

1. Any reserves dedicated by either CIG or Natural to this exchange arrangement cannot be utilized to support or justify the need for Trailblazer sytems and should be deleted from any exhibits purporting to show reserves supporting Trailblazer.

2. No delivery points such as the Cheyenne point requested in the application, which are to be utilized for interconnection with Trailblazer, should be approved by the Commission (or permitted to be included in blanket authorization) pending the resolution of Docket No. CP79–80.

3. The Applicants will provide Northwest, and any other intervenor which so requests, with a copy of their annual filing reflecting the addition of new delivery points.

Northwest's concern that Natural and CIG will be permitted to utilize given reserves to support both the instant arrangements as well as the Trailblazer System is unwarranted since the Trailblazer project will be judged on its merits and must be supported by its own gas reserves. Northwest is an intervenor in the Trailblazer proceeding and it can challenge in that proceeding the dual commitments of reserves already used to support the instant proposal. We find Northwest's request that CIG and Natural provide it with copies of their annual filings to their respective tariffs to be an unnecessary effort. Those filings will be a matter of public record and will be available to any interested party.

Northwest's request that no delivery points, such as the Cheyenne point, which are to be used for interconnection with Trailblazer should be approved, or permitted to be included in blanket authorization, is proper. The blanket authorization requested will provide CIG and Natural authority to connect future supplies on their general transmission systems only. If Natural and CIG wish to include the Cheyenne point under the instant arrangements, they should file for certificate authorization to do so after a final determination in the Trailblazer proceeding in Docket No. CP79–80.

No protest to the granting of the applications, notice of intervention or further petitions to intervene have been filed.

At a hearing held on November 14, 1979, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, as amended and supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(2) The construction and operation of the subject facilities by Natural and the proposed sales, transportation and/or exchanges of natural gas by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(3) Participation by the petitioners to intervene in these proceedings may be in the public interest.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Natural to construct and operate natural gas facilities as hereinabove described, all as more fully described in the application, as supplemented, in Docket No. CP79–45, upon the terms and conditions of this order.

(B) Certificates of public convenience and necessity are issued authorizing Natural and CIG to transport and/or exchange natural gas at specified delivery points set forth in their applications, except as is hereinafter provided, and granting Natural and CIG blanket authorization to transport and/or exchange natural gas from new supply sources which may be attached to either parties systems in the future as hereinabove described, all as more fully described in the applications, as amended and supplemented, in Docket Nos. CP79–204 and CP79–205, upon the terms and conditions of this order.

(C) A certificate of public convenience and necessity is issued authorizing Mountain Fuel to transport and/or

exchange natural gas as hereinabove described, all as more fully described in the application, as supplemented, in Docket No. CP79–288, upon the terms and conditions of this order.

(D) A certificate of public convenience and necessity is issued authorizing Natural to sell natural gas to CIG as hereinabove described, all as more fully described in the application, as supplemented, in Docket No. CP79–239, upon the terms and conditions of this order. That portion of the application requesting authority to sell gas to Mountain Fuel is dismissed.

(E) The certificates issued hereinabove and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly, as applicable, the general terms and conditions set forth in Part 154 and in paragraphs (a), (c)(3), (c)(4), (e), (f), and (g) of Section 157.20 of such Regulations.

(F) With respect to the authorizations granted by paragraphs (A) and (B) above, Applicants are advised that, in cases where volumes of natural gas were committed to interstate commerce before the date provided by the Natural Gas Policy Act of 1978, the movement of such gas cannot be made until the producer files for and receives requisite Commission authorization to sell such gas.

(G) With respect to the authorizations granted by paragraph (B) above, Applicants are to submit annual reports amending their respective related FERC Gas Tariff to identify the current supplies of gas supporting the authorized arrangements and the location of any additional delivery points.

(H) In Docket Nos. CP79–204 and CP79–205, the rates proposed by Natural and CIG, respectively, are to be subject to and consistent with the final outcome of their pending rate proceedings in Docket Nos. RP78–78 and RP79–1, respectively.

(I) The authorization granted by paragraph (B) above does not include authorization to exchange gas at the Trailblazer Cheyenne Exchange Point; Natural and CIG may file for certificate authorization to exchange gas at the Cheyenne point after issuance of the Commission's final decision on Trailblazer in Docket No. CP79–80.

(J) In Docket No. CP79–205 CIG shall not utilize the Amarex delivery point until after the issuance of the Commission's final decision regarding the issues involved in pending Docket Nos. CP76–178 and RI76–50.

(K) The rate for the transportation service authorized by paragraph (C) above shall be 13.22 cents per Mcf. The related tariff sheets tendered for filing by Mountain Fuel are accepted for filing to become effective as of the date of this order, subject to Mountain Fuels' modifying within 15 days from the date of this order the rates contained therein to reflect the transportation charge resulting from its adoption of the 10.856 percent rate of return.

(L) In connection with the authorization granted by paragraph (C) above, Mountain Fuel's Uintah Basin pipeline shall continue its exempt status under Section 1(c) of the Natural Gas Act.

(M) Should Natural seek to recover in its jurisdictional rates any costs associated with the related gathering facilities for processing, dehydration, compression, or other conditioning of the subject gas in Docket No. CP79–239, it will be required to show that these costs have not been compensated for in the appropriate national ceiling rate of the producer sale. This condition is subject to the outcome of the rehearing in Docket Nos. CI77–412, CP77–558, and CP77–577.

(N) Petitioners to intervene are permitted to intervene in their respective dockets subject to the rules and regulations of the Commission; *Provided, however,* that participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their respective petitions to intervene; and, *Provided, further,* that the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix

Docket No. CP79–45 *et al.*

Specified Delivery Points; Natural Delivery Points

(1) Adams County, Colorado—Natural, with interests in the Niobrara Area, located in Yuma and Washington Counties, Colorado, received temporary authority in Docket No. CP79–45 to construct facilities leading from the production area and delivering its interests to CIG's existing facilities in Adams County, Colorado.

(2) Kanda Exchange Point Green River, Wyoming—Mountain Fuel's Docket No. CP79–288 proposes to transport volumes of gas attributable to Natural to the existing interchange between Mountain Fuel and CIG known as the Kanda Exchange Point near Green River, Wyoming.

(3) North Wild Rose and South Dines Areas, Sweetwater, Wyoming—Natural has rights to purchase gas developed by its subsidiary, NARMCO, and a call on a portion of Davis Oil Company's (Davis) interests by virtue of NARMCO's participation. NARMCO has indicated that it will make the appropriate filing to sell this gas to Natural, while Davis, as a small producer, received its authorization under Docket No. CS71–650.

(4) Red Desert Area Lost Creek, Wyoming—Natural is currently negotiating for the purchase of a portion of the gas reserves available for a sale in the Red Desert Area.

CIG Delivery Points

(1) Willis Meter Station Wheeler County, Texas—Willis Meter Station (Willis) is currently being used as a sales delivery point to Natural under CIG's Rate Schedule F–1, Original Sheet Nos. 29 through 31 to its FERC Gas Tariff Original Volume No. I (F–1).[2] The first 20,000 Mcfd delivered by CIG to Natural at Willis will be credited toward the existing sales obligations contained in F–1. All volumes in excess of 20,000 Mcfd will be delivered pursuant to the Agreement.

(2) Amarex Meter Station Wheeler County, Texas—Authority for use of the Amarex Meter Station (Amarex) as a sales delivery point to Natural was proposed in Docket No. CP76–178. Proposed therein is CIG's sale of 2,000 Mcfd of natural gas to Natural. Similar to exchange volumes delivered at Willis Meter Station, all volumes delivered in excess of 2,000 Mcfd will be delivered under the provisions stipulated in the December 29, 1978, Agreement. The initial sale of the gas that CIG will use for deliveries at Willis was proposed in Amarex Inc.'s (Amarex) Docket No. RI76–50. The issues involved in CIG's Docket No. CP76–178 and Amarex's Docket No. RI76–50 are currently pending Commission action.

Balancing Points

(1) Forgan Meter Station Beaver County, Oklahoma—Forgan Meter Station (Forgan) is currently utilized as a CIG sales delivery point to Natural pursuant to a service agreement dated February 11, 1977, under CIG's Rate Schedule H–1, Original Sheet Nos. 17 through 19 to its FERC Gas Tariff Original Volume No. I. At the beginning of each month CIG will estimate the volumes needed at Forgan to balance with Natural's projected deliveries for that particular month. CIG will then increase or decrease its delivery of sales volumes to Natural accordingly.

(2) Cheyenne Interconnection Weld County, Colorado—The December 28, 1978, Agreement contains a provision for replacing the Forgan Balancing Point with a balancing point located on the proposed Trailblazer

[2] Rate Schedule F–1 service is available to a natural gas pipeline company for the purchases of gas from CIG's Texas Panhandle field gathering system. Natural is the only pipeline purchasing under F–1 at the present time.

Project (Trailblazer) [3] designated at the Cheyenne delivery point (Cheyenne).

[FR Doc. 79-36811 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-96]

New England Power Pool; Filing

November 23, 1979.

The filing Company submits the following:

Take notice that New England Power Pool ("NEPOOL") on November 16, 1979, tendered for filing an amendment to the NEPOOL Power Pool Agreement dated September 1, 1971, as amended. NEPOOL indicates that the NEPOOL Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

It is proposed that the tendered amendment to the NEPOOL Agreement make the electric systems of the Village of Swanton and the Village of Enosburg Falls Water and Light Department participants in the power pool, and that such participation by the Village of Swanton and the Village of Enosburg Falls Water and Light Department electric systems commence on January 1, 1980. NEPOOL states that delays in securing the necessary approvals and execution of the documents caused the filing to be made less then 60 days prior to the proposed effective date.

NEPOOL States that the amendment does not change in any manner the NEPOOL Agreement as previously filed with the Commission other than to make the village of Swanton and the Village of Enosburg Falls Water and Light Department additional participants in the power pool.

NEPOOL also states that copies of the proposed amendment have been mailed to all systems rendering or receiving service under the NEPOOL Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary

[FR Doc. 79-26812 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER78-509]

Northern Indiana Public Service Co.; Filing

November 23, 1979.

The filing company submits the following:

Take notice that on November 8, 1979, Northern Indiana Public Service Company (NIPSCO) filed a report stating that refunds have been made in accordance with an approved settlement agreement.

In accordance with the settlement, NIPSCO refunded revenues collected in excess of the settlement rates approved by the Commission plus interest computed in accordance with the Commission's rules. The total refund, of $1,854,633.05, was made on October 26, 1979.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36813 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-97]

Northern State Power Co.; Supplement No. 2, dated July 10, 1978, to the Firm Power Service Resale Agreement with the City of Shakopee

November 23, 1979.

The filing Company submits the following:

Take notice that Northern States Power Company, on November 16, 1979, tendered for filing Supplement No. 2, dated July 10, 1978, to the Firm Power Service Resale Agreement, dated September 8, 1970, with the City of Shakopee, Minnesota.

Supplement No. 2 provides for a Second Point of Delivery to the City at Northern States' Blue Lake Substation.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before December 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-36814 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-12]

San Diego Gas and Electric Co.; Application for Exemption

November 23, 1979.

Take notice that San Diego Gas and Electric Company (SDG&E), on November 1, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Sections 290.202(a), 290.205, 290.303(a), 290.501(a) of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, SDG&E states that it should not be required to file the specified data because "the data sought have been neither required nor used in developing marginal cost-based rates or time-of-use rates in California."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application

[3] As proposed in Trailblazer's Docket No. CP79-80, this system will consist of three segments extending from gas supply areas in the Overthrust area of Utah and Wyoming to Natural's system near Beatrice, Nebraska. CIG and affiliates for Columbia Gulf Transmission Company and Natural are the Applicants in Docket No. CP79-80.

be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written, views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36815 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-11]

Southern California Edison Co.; Application for Exemption

November 23, 1979.

Take notice that Southern California Edison Company (Edison), on November 1, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, and D of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Edison states that it should not be required to file the specified data for the following reasons:

(1) Edison requests a permanent exemption from the requirements in Subpart B based on alternate compliance by reporting costing periods most recently found to be appropriate to the Edison system by the California Public Utilities Commission.

(2) Based on the purpose of PURPA to achieve "the optimization of the efficiency of use of facilities and resources" Edison requests an exemption, under Subpart C, from the requirement to separate out AFUDC for additions to transmission plant. The study required to make such a separation would require many hours of effort as it would be necessary to analyze thousands of individual work orders.

(3) Because of climatological considerations and the efforts of the California Energy Commission, Edison believes that the purposes of PURPA can be served by exempting Edison from the requirements of Subpart D.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36817 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-10]

Wisconsin Power & Light Co.; Application for Exemption

November 23, 1979.

Take notice that Wisconsin Power & Light Company (Wisconsin), on October 31, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Wisconsin states that it should not be required to file the specified data because "the Applicant and the Wisconsin Public Service Commission have implemented the Federal standards, or substantially similar standards, in the State of Wisconsin in the context of existing utility rate review and regulations."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36818 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. Rp-79-75]

Colorado Interstate Gas Co., Proposed Changes in FERC Gas Tariff

November 26, 1979.

Take notice that Colorado Interstate Gas Company (CIG), on November 15, 1979, tendered for filing proposed changed in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1980.

The proposed tariff changes reflect the collection by CIG from certain of its customers of the 4.8 mills per Mcf Gas Research Institute (GRI) Adjustment Charge authorized for collection by GRI by Commission Opinion No. 64.

Copies of CIG's filing have been served on CIG's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36838 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. RP73-107, RP74-90, RP75-91, RP77-7, RP77-140, RP78-52, RP79-22, and CP71-290]

Consolidated Gas Supply Corp. and Consolidated System LNG Co.; Order Approving Settlement Agreement Subject to Conditions

November 16, 1979.

Introduction

On June 22, 1979, Consolidated Gas Supply Corporation (Consolidated) and Consolidated System LNG Company (Consolidated LNG) jointly filed with

the Secretary of the Commission a proposed settlement, in the form of a proposed stipulation and agreement, intended to resolve certain issues pending before the Commission in the above-captioned dockets.[1] The Secretary transmitted the settlement to the presiding administrative law judge who certified the settlement, together with the comments and reply comments thereon, to the Commission on August 15, 1979.[2]

The settlement resolves all pending issues in Docket Nos. RP73–107, RP74–90, RP75–91, RP77–7, and RP77–140, and certain limited issues in Docket Nos. RP78–52 and RP79–22. In addition, it resolves a limited tariff issue in Docket No. CP71–290 and reflects Consolidated LNG's agreement to decrease depreciation rates now used for certain assets, effective July 1, 1978. All parties support the settlement with the exception of Brooklyn Union Gas Company (Brooklyn Union). Brooklyn Union opposes two provisions of the settlement and asks that they be rejected. Those provisions (1) authorize future surcharges by Consolidated to recoup undercollections which may result from interim refunds pending the final resolution of storage cost allocation and rate design issues and (2) impose a refund floor equal to the storage rates which would have resulted from Consolidated's use of the allocation method of Docket No. RP78–52. The settlement provides that neither Consolidated, the staff, nor any party shall be bound by any part of the settlement unless the Commission approves all of its terms and conditions without modification.

Upon review, the Commission finds that the settlement is reasonable and should be approved as modified herein.

Procedural History and Settlement Provisions

As a result of various Commission opinions and orders resolving, severing, consolidating, and remanding issues, the issues now before the Commission in Docket Nos. RP73–107, RP74–90, RP75–91, RP77–7 and RP77–140 are the pipeline production issue in all five dockets, the rate of return issue in Docket Nos. RP75–91, RP77–7, and RP77–140, the depreciation issue in Docket Nos. RP77–7 and RP77–140, and an issue in Docket No. RP77–140 concerning Consolidated's conversion from a volumetric (mcf) to an energy (dekatherm) basis for billing and operation purposes. The settlement resolves all but the latter issue which is reserved for later Commission decision in Docket No. RP79–22.

The settlement also addresses rate issues in Docket Nos. RP78–52 and RP79–22. The rates in the former docket became effective on July 1, 1978. On December 29, 1978, Consolidated filed a general rate increase in Docket No. RP79–22. On January 30, 1979, the Commission accepted Consolidated's proposed increased rates for filing, suspended their effectiveness until July 1, 1979, and consolidated Docket No. RP79–22 with the pending proceedings in Docket No. RP78–52. The settlement resolves the depreciation issue in both dockets, severs the rate-of-return issue in both dockets for later Commission decision, and reserves the pipeline production issue in both dockets for later Commission decision. It also reserves for later Commission decision all cost allocation and rate design issues in Docket No. RP79–22 related to the rates and charges for storage service under Consolidated's GSS and SSO rate schedules, and an issue relating to the proper accounting treatment for the cost of gas withdrawn from storage.

The settlement also contains provisions relating to post-audit review procedures applicable to the Docket Nos. RP78–52 and RP79–22 rates, Consolidated's LNG purchases, Consolidated's PGA tariff, tax normalization, and miscellaneous matters.

Under the settlement, Consolidated agrees to refund $41.3 million in Docket Nos. RP73–107, RP74–90, RP75–91, RP77–7, and RP77–140, with interest at 9 percent after which it would be relieved of refund liability in those dockets except to the extent that it receives refunds from its suppliers applicable to the locked-in periods involved. Article IV also sets forth the method by which refunds on reserved issues will be computed, and the conditions surrounding the making of interim refunds and rate reductions.

On June 1, 1978, Consolidated LNG filed a petition in Docket No. CP71–290 to amend its certificate of public convenience and necessity. The petition was noticed on January 11, 1979, and called for interventions by January 31, 1979. No petitions to intervene have been filed. The settlement provides that the Commission will approve that petition which deals in the main with billing procedures. The settlement also provides that the depreciation rate for Consolidated LNG's Cove Point, Maryland terminal facilities and its pipeline from Cove Point to Loudoun, Virginia shall be reduced from 5 percent to 4.5 percent effective July 1, 1978.

Standing

Before considering the merits of Brooklyn Union's objections we shall briefly consider a procedural objection raised by Niagara Mohawk Power Corporation and by Consolidated. They contend that Brooklyn Union has no standing to object to the surcharge provision of the settlement because that provision cannot have any adverse impact on Brooklyn Union. The New York State Electric & Gas Corporation also points out that Brooklyn Union's interest in the surcharge is academic. Brooklyn Union is a customer of certain pipelines who are, in turn, GSS customers of Consolidated. The surcharge proposal is an integral part of a provision dealing with a proposed partial resolution of the allocation and rate design issues relating to the GSS rate. As such, we believe Brooklyn Union has demonstrated appropriate standing to raise the surcharge issue.

Brooklyn Union's Objections

Article IV of the settlement provides as follows with respect to the surcharge and refund floor issues:

> In the event Consolidated is required to make interim refunds under either this Article IV or Article VII prior to the entry of a final and nonappealable order under Article VI, Consolidated shall be entitled (1) to offset any excess interim refunds if such final refunds are made pursuant to a final nonappealable order, and (2) to collect a rate surcharge to recoup any excess refunds not offset in (1) above which surcharge shall be collected in a manner to permit Consolidated to recover any undercollections that may result from the final resolution of the cost allocation and rate design issues related to GSS and SSO as provided in Article VI hereto. Any surcharge resulting from such interim refunds shall not have the effect of increasing the Docket No. RP79–22 base rates above the level of base rates originally filed in that Docket.
>
> If the final determination of the cost allocation and rate design issues related to GSS and SSO either reduces the GSS rates below rates designed on the basis of the allocation method applied in Docket No. RP78–52 or increases the GSS rates above rates designed on the basis of the allocation method used in the Docket No. RP79–22 filing, then that portion of all rates resulting from such increase or decrease shall be effective only from the date of such final determination. In the event that such final determination were to result in GSS rates below the rates that would have been produced by applying the allocation method

[1] The proceedings in some of the above-captioned dockets were commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR § 1000.1), those proceedings were transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] See Order No. 32, issued June 13, 1979, amending Section 1.18(e) of the Commission's Rules of Practice and Procedure for procedures governing offers of settlement.

of Docket No. RP78-52, refunds attributable to the period July 1, 1979, to the date of such final determination shall be based on the rates that would have been produced by application of the allocation method of Docket No. RP78-52.

The Article IV refund provision is designed to protect Consolidated against undercollections in the event the Commission ultimately adopts a cost allocation and rate design method in Docket No. RP79-22 which is different from that filed by Consolidated and in the further event the Commission applies that decision as of the July 1, 1979, effective date of the rates in Docket No. RP79-22.

In its answer to Brooklyn Union, Rochester Gas and Electric Corporation (Rochester) points out that Consolidated's customers insisted that as each issue is resolved, any resulting refunds should be paid immediately, and that the surcharge procedure was agreed to in order to protect Consolidated from undercollections which might result from its inability, absent protection, to offset refunds against undercollections which might result from the Commission's final decision in Docket No. RP79-22.

We also take note that the settlement covers numerous dockets and issues and results in immediate refunds to Consolidated's customers of over $40 million. We believe the settlement is in the public interest and should be approved as a reasonable and practical alternative to continued and possibly protracted litigation in these cases at great public and private expense. With reference to the settlement refund procedures, we see no reason under the circumstances presented here why Consolidated, having agreed to make immediate refunds, should not be permitted, as part of the settlement, to offset such refunds against undercollections, if any, resulting from a subsequent decision on the cost allocation issues in Docket No. RP79-22. The undercollections, if any, in Docket No. RP79-22 would represent costs which should have been borne by Consolidated's resale customers rather than its GSS storage customers. As proposed, the surcharge would properly be charged only to the resale customers and would allow Consolidated to collect no more than its revenue requirements based on Commission approved costs.

We do not believe the refund provision is beyond our authority to approve and we do not believe it constitutes retroactive ratemaking or the granting of reparations. As Rochester correctly points out, the proposed surcharge is limited by Consolidated's filed rates. The amount actually paid by a customer, after giving effect to refunds plus the surcharge, may not exceed what the customer would have paid under Consolidated's filed-for-rates. We shall therefore approve the settlement refund procedure.

The Commission has a duty to order refunds at the earliest possible time, and this obligation must be exercised consistent with due process and an eye to the practical consequences involved.[3] In carrying out this responsibility the Commission has discretion and flexibility in the exercise of its refund authority.[4] Since the authority to order refunds is part of the Commission's rate-making authority under Section 4 of the Natural Gas Act, it is governed by the same general standards. Just as the Commission must balance the competing interests of the consumer and the natural gas company in setting rates,[5] it must also balance those interests in ordering refunds.[6] We believe the Commission has the legal authority to approve a provision, such as that proposed by Consolidated, to impose a surcharge at a future date to offset interim refunds and interim rate reductions made in a past period. Turning to the equities of the matter, we believe the surcharge proposal, in the context of the facts and circumstances of these proceedings, is reasonable and should be approved by the Commission as a part of the overall settlement agreement. In this case, Consolidated has agreed to make interim refunds and interim rate reductions to the benefit of its customers pending the final determination of the cost allocation issues allowing the customers to be, in effect, the stake-holders of certain monies. This finding is, of course, without prejudice to the Commission's right in future cases to sever issues and disallow offsetting of refunds in one phase of a case with undercollections in another phase of the case.[7]

However, we shall require that prior to making effective any surcharge pursuant to Article IV, Consolidated shall file with the Commission a surcharge proposal setting forth the calculation of the surcharge to each customer, the total amount to be collected from each customer, the period over which the surcharges are intended to be collected, and the amount of refunds received by each customer. The surcharge proposal shall be subject to Commission review and approval.

Article IV of the settlement also establishes a refund floor with respect to the cost allocation and rate design issues in Docket No. RP79-22. The effect is to limit Consolidated's potential undercollections and the related surcharges. Under this provision, Consolidated's GSS (storage service) customers will not be entitled to a greater refund than would result from reducing the filed for GSS rates in Docket No. RP79-22 to the level they would have been had Consolidated applied the allocation methods used in Docket No. RP78-52. The allocation methods used in Docket No. RP78-52 were approved by the FPC in Opinion Nos. 703 and 819, both involving Consolidated.

Brooklyn Union argues that the refund floor is not reasonable or appropriate. It states that when Consolidated elected to materially change its cost allocation and rate design methods through a rate filing, it assumed the hazards involved in that procedure. Thus, it concludes, there is no valid basis for approving a settlement which restricts the Commisson's authority to order refunds.

Upon review of this matter we find Brooklyn Union's objections to be without merit and they are rejected. The establishment of a refund floor in Docket No. RP79-22 with respect to the cost allocation procedure is analogous to the establishment of a refund floor at the level represented by the "last clean rate."[8] No party contested the allocation methods or resulting GSS rates in Docket No. RP78-52, and we find it is reasonable as part of the overall settlement to limit Consolidated's refunds in Docket No. RP79-22 to the difference between the rates currently being collected in Docket No. RP79-22 and the rates resulting from the allocation of approved RP79-22 costs in accordance with the allocation methods used in Docket No. RP78-52. There would of course be no bar to the prospective reduction of the GSS rate levels to below the refund floor in the settlement or for that matter in excess of those claimed in Docket No. RP79-22.[9]

The last portion of Article IV of the settlement agreement which requires

[3] *F.P.C. v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 155 (1962).

[4] *F.P.C. v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 155 (1962); *Placid Oil Co. v. F.P.C.*, 483 F.2d 880, 905 (5th Cir. 1973) *aff'd sub nom. Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283 (1974).

[5] *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[6] See *Consumer Federation of America v. F.P.C.*, 515 F.2d 347, 359 (D.C. Cir. 1975).

[7] *F.P.C. v. Tennessee Gas Transmission Co., supra.*

[8] See *F.P.C. v. Sunray DX Oil Co.*, 391 U.S. 9, 24 (1967).

[9] Brooklyn Union also states that Consolidated's proposed rates in Docket No. RP79-22 are unduly discriminatory against storage customers. The issues of allocation of costs to storage and design of storage service rates are not resolved by the settlement. The proper forum for determining any discrimination issue is at the hearing on those costs and rates.

attention is the provision setting forth the interest to be paid on the amount refunded. The agreement provides that refunds shall be made, "with interest at 9 percent per annum in accordance with the Commission's currently effective regulations." Subsequent to the certification of this settlement the Commission amended Section 154.67(d) of the Regulations (18 CFR § 154.67(d)) which governs the amount of interest to be paid on refunds. Accordingly, we shall condition our approval of this settlement agreement to provide that all interest on refunds shall be calculated pursuant to the provisions of Section 154.67(d) of the Regulations.

In the settlement, Consolidated states that if the Commission approves the settlement without conditions, Consolidated's claim of special circumstances and request for relief in Docket Nos. RP73–107, RP74–90, RP75–91, RP77–7, and RP77–140, with respect to the pipeline production issue shall be deemed withdrawn without prejudice to any party's position in Docket Nos. RP78–52 and RP79–22. It is requested that the Commission state that in approving the settlement it is not relying on Consolidated's withdrawal of its claim of special circumstances and request for relief. The Commission so states.

The Commission Orders

(A) The settlement is approved subject to modification of Article IV in accordance with the terms of this order.

(b) The rate of return issue in the consolidated proceedings in Docket Nos. RP78–52 and RP79–22 is hereby severed from the remainder of the proceedings in those dockets and will be decided separately by the Commission.

(C) The Commission's letter order dated March 1, 1979, in Docket Nos. RP72–157, *et al.*, is hereby modified by substituting in the second paragraph of page one, "Docket Nos. RP78–52 and RP79–22" for the words "Docket Nos. RP73–107, RP74–90, and RP75–91".

(D) Consolidated's tariff sheets attached to the settlement as Appendices C, D, and E, are hereby accepted for filing, approved and permitted to become effective as proposed.

(E) Consolidated LNG's petition filed on June 1, 1978, to amend its certificate in Docket No. CP71–290 is hereby granted.

(F) Consolidated shall revise the PGA provisions of its tariff effective September 1, 1979, in accordance with the provisions of Article X of the settlement.

(G) The settlement is incorporated herein by reference and made a part of this order, and is hereby approved and adopted, as modified, provided that nothing in Section 8 of Appendices F and G thereto shall be construed as negating Consolidated's duty to make appropriate provision for flowing through the net revenues from any off-system sales Consolidated may make in Docket Nos. CP79–228 and CP79–319 or otherwise during the period in which the Stipulation and Agreement remains in force and Consolidated agrees to treat such revenues in the manner prescribed by the Commission in its orders in such certificate proceedings or in such ancillary proceedings, including Docket No. RP79–22, in which the Commission may direct such issues to be resolved.

(H) The proceedings in Docket Nos. RP73–107, RP74–90 and RP75–91 (Appalachian Production) are hereby terminated.

(I) Prior to making effective any surcharge pursuant to Article IV of the settlement, Consolidated shall file with the Commission a surcharge proposal setting forth the calculation of the surcharge to each customer, the total amount to be collected from each customer, the period over which the surcharges are intended to be collected and the amount of the refunds received by each customer. The surcharge proposal shall be subject to Commission review and approval.

(J) All refunds under this agreement shall include interest calculated pursuant to the provisions of Section 154.67(d) of the Regulations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36939 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80–15]

Consumers Power Co.; Application

November 26, 1979.

Take notice that Consumers Power Company ("Consumers") on November 9, 1979 tendered for filing its Application for Authority to Issue Securities Under Section 204 of the Federal Power Act.

Consumers intends to enter into an Acceptance Facility Agreement (the "Agreement") with certain banks (the "Banks") for the purpose of financing Consumers' acquisition and storage of a portion of its coal, fuel oil and gas (the "Fuel"). Pursuant to the Agreement, the Banks will accept drafts of Consumers from time to time in aggregate amounts outstanding at any one time not to exceed the lesser of $150,000,000 (the "Commitment") or the cost of the Fuel stored at certain field warehouses, which Fuel will be subject to security interests granted by Consumers to the Banks. The Commitment will be available to Consumers until December 4, 1980 or the Termination Date (as defined in the Agreement).

Consumers may also, upon the occurrence of certain events, cease issuing drafts for acceptance, but instead issue notes upon the Banks pursuant to a revolving credit facility of an amount equal to the Commitment less the amounts of any outstanding, unmatured and unpaid drafts until the Termination Date or such earlier time as provided in the Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 3, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36940 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79–12]

El Paso Natural Gas Co.; Informal Settlement Conference

November 26, 1979.

Take notice that on December 11, 1979, at 9:30 a.m. an informal settlement conference of all interested persons will be held in this proceeding. The conference will be held in a room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene, atendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits the issues in this proceeding and to make commitments with respect to such issues

and any offers of settlement or stipulations discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36941 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP78-50]

Gas Gathering Corp.; Restatement of Base Tariff Rate

November 26, 1979.

Take notice that Gas Gathering Corporation (GGC), on November 19, 1979, tendered for filing Fifth Revised Sheet No. 8 of 8, Supplement No. 24 to its FERC Gas Tariff. This tariff sheet restates the Base Tariff Rate within GGC's PGA clause. The tendered tariff sheet would continue a Gathering Charge of 5.7157 cents per Mcf and restate a Purchased Gas Charge of 143.70602 cents per Mcf. GGC states that the proposed tariff sheet will produce no change in its currently effective rates. GGC states that the proposed tariff sheet is filed pursuant to Section 154.38(d)(4)(vi)(a) of the Commission's Regulations, and requests that the proposed tariff sheet be made effective on September 19, 1979, the expiration of the 36-month period after the effective date of GGC's PGA clause. GGC has submitted a cost study in support of the proposed rate.

GGC states that a copy of the filing has been served upon Transcontinental Gas Pipeline Corporation, its sole jurisdictional customer.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (1.18, 1.10). All such petitions or protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36942 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-17]

Illinois Power Co.; Application

November 26, 1979.

Take notice that on November 15, 1979, Illinois Power Company (Applicant) filed an application seeking an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of up to $125,000,000 of unsecured notes and commercial paper. Applicant is incorporated under the laws of the State of Illinois and operates as an electric and gas public utility therein.

The net proceeds from the issuance of the notes will be added to working capital for ultimate application toward the cost of gross additions to utility properties and/or to reimburse Applicant's treasury for construction expenditures. Applicant's construction program, as now scheduled, calls for expenditures of approximately $1,355,000,000 for the five-year period of 1979–1983 after giving effect to participation of 20% by certain electric cooperatives in the ownership of the Clinton Nuclear Power Station.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36943 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 23, 1979.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Kansas Corporation Commission

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-05441/K-79-0316
2. 15-081-20049-0000
3. 108 000 000
4. True Oil Company
5. Hall #1-32
6. Hugoton
7. Haskell KS
8. 14.2 million cubic feet
9. November 6, 1979
10. Northern Natural Gas Company

1. 80-05442/K-79-0353
2. 15-093-20433-0000
3. 103 000 000
4. Gulf Oil Corporation
5. Tate 1-2-32
6. Panoma
7. Kearny KS
8. 42.0 million cubic feet
9. November 6, 1979
10. Colorado Interstate Gas Co

1. 80-05443/K-79-0676
2. 15-093-20516-0000
3. 103 000 000
4. Amoco Production Company
5. McClure Gas Unit #2
6. Panoma/Council Grove
7. Kearny KS
8. 160.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

1. 80-05444/K-79-0675
2. 15-093-20539-0000
3. 103 000 000
4. Amoco Production Company
5. Menn Georgia A #2
6. Panoma/Council Grove
7. Kearny KS
8. 160.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

1. 80-05445/K-79-0674
2. 15-093-20532-0000
3. 103 000 000
4. Amoco Production Company
5. Menn Georgia B #2
6. Panoma/Council Grove
7. Kearney KS
8. 160.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

1. 80-05446/K-79-0672
2. 15-093-00000-0000
3. 108 000 000
4. Amoco Production Company
5. Miles Gas Unit C #1
6. Hugoton Chase
7. Kearny KS
8. 9.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

1. 80-05447/K-79-0670
2. 15-093-20403-0000
3. 103 000 000
4. Amoco Production Company
5. Loeppke Gas Unit #2
6. Panoma/Council Grove

7. Kearny KS
8. 115.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

1. 80-0544/K-79-0669
2. 15-129-00000-0000
3. 108 000 000
4. Amoco Production Company
5. Milburn Gas Unit B #1
6. Hugoton Chase
7. Morton KS
8. 18.0 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company

Louisiana Office of Conservation

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-01130 (Revised)
2. 17-073-21107
3. 103 108
4. Lock Arbor Production Co
5. Smith et al #3
6. Monroe Gas Field
7. Ouachita, LA
8. 15.0 million cubic feet
9. March 22, 1979
10. United Gas Pipeline Co

1. 79-01132 (Revised)
2. 17-073-21109
3. 103 108
4. Lock Arbor Production Co
5. Smith et al #5
6. Monroe Gas Field
7. Ouachita, LA
8. 15.0 million cubic feet
9. March 22, 1979
10. United Gas Pipeline Co

1. 79-02157 (Revised)
2. 17-073-21105
3. 103 108
4. Lock Arbor Production Co
5. Smith et al #1
6. Monroe Gas Field
7. Ouachita, LA
8. 15.0 million cubic feet
9. March 22, 1979
10. United Gas Pipeline Co

Oklahoma Corporation Commission

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-05460/00630
2. 35-007-21531-0000
3. 103 000 000
4. Bettis Boyle & Stovall
5. Sargent No. 1
6. Knowles Council Grove
7. Beaver OK
8. 110.0 million cubic feet
9. November 6, 1979
10. Panhandle Eastern Pipeline

1. 80-05461/00626
2. 35-007-21577-0000
3. 103 000 000
4. Bettis Boyle & Stovall
5. Carrier No. 1
6. Knowles Council Grove
7. Beaver OK
8. 81.0 million cubic feet
9. November 6, 1979
10. Michigan-Wisconsin Pipeline Co

1. 80-05462/00731
2. 35-025-20308-0000
3. 103 000 000
4. Argonaut Energy Corporation
5. Rowan Trust #1 #025-54893
6. N E Griggs
7. Cimarron OK
8. 5.3 million cubic feet
9. November 6, 1979
10. Panhandle Eastern Pipeline Co

1. 80-05463/00611
2. 35-007-21373-0000
3. 103 000 000
4. Natural Gas Anadarko Inc.
5. Beck 1-21
6. Mocane-Morrow
7. Beaver OK
8. 40.0 million cubic feet
9. November 6, 1979
10. Northern Natural Gas Company

1. 80-05464/00622
2. 35-007-21328-0000
3. 103 000 000
4. Natural Gas Anadarko Inc.
5. Mansfield A #1-25
6. West Six Mile
7. Beaver OK
8. 20.0 million cubic feet
9. November 6, 1979
10. Northern Natural Gas Company, Panhandle Eastern Pipeline Co

1. 80-05465/00536
2. 35-045-20660-0000
3. 102 000 000
4. Pilon Exploration Corporation
5. Fritz Kelln No. 1
6. None—Wildcat
7. Ellis OK
8. 55.0 million cubic feet
9. November 6, 1979
10. Transwestern Pipeline Company

1. 80-05466/00529
2. 35-121-20572-0000
3. 102 000 000
4. Nelson Petroleum Company
5. Nita Basden No. 1-11 #121-56237
6. Russellville
7. Pittsburg OK
8. 180.0 million cubic feet
9. November 6, 1979
10. Arkansas Louisiana Gas Co.

1. 80-05467/00512
2. 35-071-20810-0000
3. 103 000 000
4. Chase Exploration Corp.
5. Seaboch #1-26 (CS #1)
6. Unnamed
7. Kay OK
8. 14.2 million cubic feet
9. November 6, 1979
10. Cities Service Gas Company, Chase Gathering Systems Inc.

1. 80-05468/00227
2. 35-011-20698-0000
3. 102 000 000
4. Michigan Wisconsin Pipe Line Co.
5. Neeley #1
6. NE Squaw Creek
7. Baline OK
8. 183.0 million cubic feet
9. November 6, 1979
10. Michigan Wisconsin Pipe Line Co.

1. 80-05469/00126
2. 35-129-20275-0000
3. 102 000 000
4. Hoover & Bracken Energies, Inc.
5. Thomas Hill #1-7
6. NE Reydon
7. Custer OK
8. 73.0 million cubic feet
9. November 6, 1979
10. Northern Natural Gas Company

1. 80-05470/00540
2. 35-059-20721-0000
3. 103 000 000
4. S Keith Tuthill & Bill J Barbee
5. Smithton #1-29
6. Mocane-Laverne
7. Harper OK
8. 100.0 million cubic feet
9. November 6, 1979
10. Northern Natural Gas Co.

1. 80-05471/00619
2. 35-151-20762-0000
3. 102 000 000
4. S Keith Tuthill & Bill J Barbee
5. Walker #1-10
6. SW Freedom
7. Woodward OK
8. 400.0 million cubic feet
9. November 6, 1979
10. Panhandle Eastern Pipe Line

Utah Division of Oil, Gas and Mining

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-05348/K-115-1B
2. 43-019-30491-0000
3. 102 000 000
4. Bowers Oil and Gas Exploration Inc.
5. Bowers State Well #1-36
6. Wildcat
7. Grand UT
8. 120.0 million cubic feet
9. November 6, 1979
10.

West Virginia Department of Mines, Oil and Gas Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-05350
2. 47-099-00964-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E R Prichard 5-907
6.
7. Wayne WV
8. 1.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05351
2. 47-099-00965-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Lenora Newman 1-935
6.
7. Wayne WN
8. 15.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05352
2. 47-099-00966-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E R Prichard 7-966
6.
7. Wayne WN
8. 4.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05353
2. 47-099-00973-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 37-932
6.
7. Wayne WN
8. 4.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05354
2. 47-099-00981-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 74-930
6.
7. Wayne WN
8. 8.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05355
2. 47-099-00985-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 40-965
6.
7. Wayne WN
8. 4.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05356
2. 47-099-00990-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 39-934
6.
7. Wayne WN
8. 2.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05357
2. 47-099-00991-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 41-970
6.
7. Wayne WN
8. 3.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05358
2. 47-099-01000-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Guyan Oil 10-967
6.
7. Wayne WN
8. 3.1 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05359
2. 47-099-01010-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 47-990
6.
7. Wayne WN
8. 3.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05360
2. 47-099-01011-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Hoard Baldwin 48-991
6.
7. Wayne WN
8. 2.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05361
2. 47-099-01015-0000
3. 108 000 000
4. Industrial Gas Corporation
5. G W Workman 5-958
6.
7. Wayne WN
8. 1.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05362
2. 47-099-00961-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 72-923
6.
7. Wayne WN
8. 12.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05363
2. 47-099-00824-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 63-848
6.
7. Wayne WN
8. 1.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05364
2. 47-099-01486-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 77-937
6.
7. Wayne WN
8. 7.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05365
2. 47-099-01291-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 73-929
6.
7. Wayne WN
8. 13.6 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05366
2. 47-099-00913-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F F Mathewson 12-901
6.
7. Wayne WN
8. .9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05367
2. 47-099-00914-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E R Prichard 4-902
6.
7. Wayne WN
8. 2.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05368
2. 47-099-00958-0000
3. 108 000 000
4. Industrial Gas Corporation
5. G W Workman 2-920
6.
7. Wayne WN
8. 2.1 million cubic feet
9. November 6, 1979

10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05369
2. 47-099-00875-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mathewson 7-880
6.
7. Wayne WN
8. 4.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05370
2. 47-099-00881-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E R Prichard 3-886
6.
7. Wayne WN
8. 3.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05371
2. 47-099-00882-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mathewson 8-881
6.
7. Wayne WN
8. 4.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05372
2. 47-099-00885-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mathewson 9-884
6.
7. Wayne WN
8. 3.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05373
2. 47-099-00886-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mahthewson 10-892
6.
7. Wayne WV
8. 3.7 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05374
2. 47-099-00893-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mathewson 11-893
6.
7. Wayne WV
8. 1.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05375
2. 47-099-01499-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 79-949
6.
7. Wayne WV
8. 5.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05376
2. 47-099-00853-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 65-856
6.
7. Wayne WV
8. 4.6 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05377
2. 47-099-00854-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 66-859
6.
7. Wayne WV
8. 1.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05378
2. 47-099-00856-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 67-860
6.
7. Wayne WV
8. 5.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05379
2. 47-099-00858-0000
3. 108 000 000
4. Industrial Gas Corporation
5. F E Mathewson 6-862
6.
7. Wayne WV
8. 4.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05380
2. 47-099-00871-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Wilson Coal Land Co 61-841
6.
7. Wayne WV
8. 3.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05381
2. 47-099-00874-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Marion Burgess B 1-879
6.
7. Wayne WV
8. 5.7 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05382
2. 47-039-01638-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E J Lawson 1-962
6.
7. Kanawha WV
8. 128.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05383
2. 47-039-01637-R000
3. 108 000 000
4. Industrial Gas Corporation
5. J W Young 1-960
6.
7. Kanawha WV
8. 8.1 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05384
2. 47-039-01595-0000
3. 108 000 000
4. Industrial Gas Corporation
5. E F Pauley 1-865
6.
7. Kanawha WV
8. 8.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05385
2. 47-039-01545-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Roy L Smith 1-809
6.
7. Kanawha WV
8. 5.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05386
2. 47-039-01531-0000
3. 108 000 000
4. Industrial Gas Corporation
5. R C Alford 1-807
6.
7. Kanawha WV
8. 7.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc
1. 80-05387
2. 47-005-00895-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Pond Fork 5-988
6.

7. Boone WV
8. 1.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05388
2. 47-005-00891-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Pond Fork 3-942
6.
7. Boone WV
8. 2.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05389
2. 47-005-00885-R000
3. 108 000 000
4. Industrial Gas Corporation
5. Pond Fork 2-912
6.
7. Boone WV
8. 1.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05390
2. 47-005-00868-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Lenning Estate 9-845
6.
7. Boone WV
8. .9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05391
2. 47-043-01165-0000
3. 108 000 000
4. Industrial Gas Corporation
5. C Underhill 1-921
6.
7. Lincoln WV
8. 1.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05392
2. 47-043-01166-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Island Creek Mining 13-924
6.
7. Lincoln WV
8. 6.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05393
2. 47-043-01167-0000
3. 108 000 000
4. Industrial Gas Corporation
5. M Bowman "B" 1-941
6.
7. Lincoln WV
8. 6.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05394
2. 47-043-01168-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Island Creek Mining 14-925
6.
7. Lincoln WV
8. 4.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05395
2. 47-043-01170-0000
3. 108 000 000
4. Industrial Gas Corporation
5. M Bowman "A" 1-952
6.
7. Lincoln WV
8. 7.3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05396
2. 47-043-01172-0000
3. 108 000 000
4. Industrial Gas Corporation
5. W O Morris 1-939
6.
7. Lincoln WV
8. 4.6 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc, Huntington Alloys Inc, Libbey-Owens-Ford Co, Owens-Illinois Inc

1. 80-05397
2. 47-043-01171-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Island Creek Mining 15-926
6.
7. Lincoln, WV
8. 5.1 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05402
2. 47-043-01187-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Barrett-Mallory 1-968
6.
7. Lincoln, WV
8. 9.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05403
2. 47-043-00974-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Koontz Realty Co 7-816
6.
7. Lincoln, WV
8. 10.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05404
2. 47-043-00968-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Stein & McComas 12-812
6.
7. Lincoln, WV
8. 8.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05405
2. 47-043-00967-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Pattie Porter 9-811
6.
7. Lincoln, WV
8. 5.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05406
2. 47-043-00964-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Stein & McComas 11-806
6.
7. Lincoln, WV
8. 2.0 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05407
2. 47-043-0954-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Pattie Porter 8-810
6.
7. Lincoln, WV
8. 12.1 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05408
2. 47-043-00953-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Stein & McComas 10-805
6.
7. Lincoln, WV
8. 6.4 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05409
2. 47-043-00952-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Island Creek Mining 2-808
6.
7. Lincoln, WV
8. 7.7 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05410
2. 47-043-00946-0000
3. 108 000 000

4. Industrial Gas Corporation
5. Koontz Realty Co. 6-803
6.
7. Lincoln, WV
8. 7.8 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05411
2. 47-043-00943-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Stein & McComas 9-804
6.
7. Lincoln, WV
8. 8.9 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05412
2. 47-043-00940-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Koontz Realty Co 5-802
6.
7. Lincoln, WV
8. 6.5 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05413
2. 47-039-01777-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Coll-Carpenter 2-999
6.
7. Kanawha, WV
8. 3.7 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05414
2. 47-039-01734-0000
3. 108 000 000
4. Industrial Gas Corporation
5. Coll-Carpenter 1-998
6.
7. Kanawha, WV
8. 1,3 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05415
2. 47-039-01718-0000
3. 108 000 000
4. Industrial Gas Corporation
5. W R Stover A1-961
6.
7. Kanawha, WV
8. 11.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

1. 80-05416
2. 47-039-01648-0000
3. 108 000 000
4. Industrial Gas Corporation
5. S C Stover 1-959
6.
7. Kanawha, WV
8. 11.2 million cubic feet
9. November 6, 1979
10. Houdaille Industries Inc., Huntington Alloys Inc., Libbey-Owens-Ford Co., Owens-Illinois Inc.

U.S. Geological Survey Metairie, La.

1. Control Number (F.E.R.C./State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80-05420/G9-848
2. 17-706-40226-0000-0
3. 102 000 000
4. Texas Gas Exploration Corporation
5. Texas Gas Expl Corp NF-7-D
6. Vermilion, SA
7. 267
8. 888.0 million cubic feet
9. November 6, 1979
10. Texas Gas Transmission Corp, Consolidated Gas Supply Corp, Columbia Gas Transmission Corp

1. 80-05421/G9-888
2. 17-710-20022-00S2-0
3. 102 000 000
4. Forest Oil Corporation
5. Eugene Island Blk 273 A-6A
6. Eugene Island
7. 273
8. 1460.0 million cubic feet
9. November 6, 1979
10. Columbia Gas Transmission Corp, Texas Gas Transmission Corp, Michigan-Wisconsin Pipeline Co

1. 80-05422/G9-873
2. 17-701-40036-0000-0
3. 102 000 000
4. Getty Oil Company
5. West Cameron 437 A-4
6. West Cameron
7. 437
8. 1200.0 million cubic feet
9. November 6, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. 80-05430/G9-826
2. 17-712-40194-00D2-0
3. 102 000 000
4. Marathon Oil Company
5. Ship Shoal Block 272 #A-3D
6. Ship Shoal—South Addition
7. 272
8. 1610.0 million cubic feet
9. November 6, 1979
10. Natural Gas Pl Co of America, Transcontinental Gas Pipeline Corp

1. 80-05431/G9-867
2. 17-708-40188-0000-0
3. 102 000 000
4. Shell Oil Company
5. A-8
6. South Marsh Island
7. 115
8. 73.0 million cubic feet
9. November 6, 1979
10. Transcontinental Gas Pipeline Co

1. 80-05432/G9-893
2. 17-701-40065-0000-0
3. 102 000 000
4. Kerr-McGee Corporation
5. OCS G-3274 #A-2
6. West Cameron
7. 330
8. 157.0 million cubic feet
9. November 6, 1979
10. Southern Natural Gas Co, United Gas Pipeline Co, Transcontinental Gas Pipeline Corp

1. 80-05433/G9-854
2. 17-706-40357-00D1-0
3. 102 000 000
4. CNG Producing Company
5. B-10D1
6. Vermilion
7. 313
8. 175.0 million cubic feet
9. November 6, 1979
10. Consolidated Gas Supply Corp, Columbia Gas Transmission Corp

1. 80-05434/G9-853
2. 17-712-40205-00S1-0
3. 102 000 000
4. CNG Producing Company
5. B-4-S1
6. Ship Shoal
7. 271
8. 2,920.0 million cubic feet
9. November 6, 1979
10. Consolidated Gas Supply Corp, Texas Gas Transmission Corp, Columbia Gas Transmission Corp

1. 80-05450/G9-852
2. 17-719-40151-00D2-0
3. 102 000 000
4. Conoco Inc
5. OCS-0138 #B-11D
6. West Delta
7. 45
8. 24.0 million cubic feet
9. November 7, 1979
10. Tennessee Gas Pipeline

1. 80-05451/G9-892
2. 17-701-40015-0000-0
3. 102 000 000
4. Kerr-McGee Corporation
5. OCS G-3274 #A-1
6. West Cameron
7. 330
8. 157.0 million cubic feet
9. November 7, 1979
10. Southern Natural Gas Co, United Gas Pipeline Co, Transcontinental Gas Pipeline Co

1. 80-05452/G9-887
2. 17-710-20027-00S2-0
3. 102 000 000 Denied
4. Forest Oil Corporation
5. Eugene Is BLK 273 A-12A
6. Eugene Island
7. 273
8. 1,125.0 million cubic feet
9. November 7, 1979
10. Columbia Gas Transmission Corp, Texas Gas Transmission Corp, Michigan-Wisconsin Pipeline Co

1. 80-05453/G9-865
2. 17-708-40221-0002-0
3. 102 000 000
4. Shell Oil Company
5. A-15
6. South Marsh Island
7. 115

8. 167.0 million cubic feet
9. November 7, 1979
10. Transcontinental Gas Pipeline Co

1. 80-05454/G9-866
2. 17-708-40291-0000-0
3. 102 000 000
4. Shell Oil Company
5. A-16
6. South Marsh Island
7. 115
8. 135.0 million cubic feet
9. November 7, 1979
10. Transcontinental Gas Pipeline Co

1. 80-05455/G9-872
2. 17-701-40022-0000-0
3. 102 000 000
4. Getty Oil Company
5. West Cameron 436 A-3
6. West Cameron
7. 436
8. 1,200.0 million cubic feet
9. November 7, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. 80-05456/G9-875
2. 17-701-40053-0000-0
3. 102 000 000
4. Getty Oil Company
5. West Cameron 436 A-7
6. West Cameron
7. 436
8. 1,200.0 million cubic feet
9. November 7, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. 80-05457/G9-877
2. 17-701-40068-0000-0
3. 102 000 000
4. Getty Oil Company
5. West Cameron 437 A-11
6. West Cameron
7. 437
8. 1,200.0 million cubic feet
9. November 7, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. 80-05458/G9-864
2. 17-708-40308-0000-0
3. 102 000 000
4. Shell Oil Company
5. A-17
6. South Marsh Island
7. 115
8. 178.0 million cubic feet
9. November 7, 1979
10. Transcontinental Gas Pipeline Co

1. 80-05459/G9-874
2. 17-701-40043-0000-0
3. 102 000 000
4. Getty Oil Company
5. West Cameron 437 A-5
6. West Cameron
7. 437
8. 1,200.0 million cubic feet
9. November 7, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. 80-05472/G9-894
2. 17-701-40066-0000-0
3. 102 000 000
4. Kerr-McGee Corporation
5. OCS G-3274 No A-3
6. West Cameron
7. 330
8. 152.0 million cubic feet
9. November 7, 1979
10. Southern Natural Gas Co, United Gas Pipeline Co, Transcontinental Gas Pipeline Co

1. 80-05473/G9-886
2. 17-710-20028-00S2-0
3. 102 000 000
4. Forest Oil Corporation
5. Eugene Is Blk 273 #A-4A
6. Eugene Island
7. 273
8. 1,125.0 million cubic feet
9. November 7, 1979
10. Columbia Gas Transmission Corp, Texas Gas Transmission Corp, Michigan-Wisconsin Pipeline Co

1. 80-05435/G9-871
2. 17-701-40025-0000-
3. 102
4. Getty Oil Company
5. West Cameron 437 A-1
6. West Cameron
7. 437
8. 1,200.0 million cubic feet
9. November 6, 1979
10. Transco Gas Supply Company, Natural Gas Pipeline Co of Amer

1. Control Number (F.E.R.C./State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80-05398/G9-858
2. 42-709-40252-00S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-480 #A-6
6. High Island South Addition
7. A-480
8. 551.0 million cubic feet
9. November 6, 1979
10. United Gas Pipe Line Company, Texas Eastern Transmission Corp

1. 80-05399/G9-859
2. 42-711-40294-00S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-279 #A-2
6. High Island East Addition
7. A-279
8. 324.0 million cubic feet
9. November 6, 1979
10. United Gas Pipeline Co, Michigan-Wisconsin Pipeline Co

1. 80-05400/G9-860
2. 42-711-40370-00S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-279 #A-12
6. High Island East Addition
7. A-279
8. 456.0 million cubic feet
9. November 6, 1979
10. United Gas Pipeline Co, Michigan-Wisconsin Pipeline Co

1. 80-05401/G9-857
2. 42-709-40212-01S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-480 #A-4
6. High Island South Addition
7. A-480
8. 322.5 million cubic feet
9. November 6, 1979
10. United Gas Pipe Line Company, Texas Eastern Transmission Corp

1. 80-05423/G9-855
2. 42-709-40282-00S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-480 A-10
6. High Island South Addition
7. A-480
8. 470.0 million cubic feet
9. November 6, 1979
10. United Gas Pipe Line Company, Texas Eastern Transmission Corp

1. 80-05424/G9-861
2. 42-711-40294-00S2-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-279 #A-2
6. High Island East Addition
7. A-279
8. 92.0 million cubic feet
9. November 6, 1979
10. United Gas Pipeline Co., Michigan-Wisconsin Pipeline Co

1. 80-05429/G9-856
2. 42-709-40260-00S1-0
3. 102 000 000
4. Marathon Oil Company
5. High Island Blk A-480 #A-5
6. High Island
7. A-480
8. 1655.0 million cubic feet
9. November 6, 1979
10. United Gas Pipe Line Company, Texas Eastern Transmission Corp

U.S. Geological Survey, Albuquerque, N. Mex.

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-05349/NM-3713-79
2. 30-041-10-540-0000-0
3. 108 000 000 Denied
4. Tenneco West Inc
5. Federal 22 #1
6. Chaveroo-San Andres
7. Roosevelt NM
8. 3.4 million cubic feet
9. November 6, 1979
10. Cities Service Oil Company

1. 80-05417/NM-3718-79
2. 30-041-10527-0000-0
3. 108 000 000 Denied
4. Tenneco West Inc
5. Federal 23 #1
6. Chaveroo San Andres
7. Roosevelt NM
8. 4.8 million cubic feet
9. November 6, 1979
10. Cities Service Oil Company

1. 80-05418/NM-3738-79
2. 30-041-10503-0000-0
3. 108 000 000 Denied

4. Tenneco West Inc
5. Federal 27 #2
6. Chaveroo San Andres
7. Roosevelt NM
8. 3.1 million cubic feet
9. November 6, 1979
10. Cities Service Oil Company
1. 80-05419/NM-3774-79
2. 30-025-11778-0000-0
3. 108 000 000 Denied
4. Santa Fe Energy Company
5. Carlson B-25-2 Serial #032579 E
6. Justis
7. Lea NM
8. 7.4 million cubic feet
9. November 6, 1979
10.
1. 80-05425/NM-3491-79
2. 30-039-21396-0000-0
3. 102 000 000
4. Amoco Production Company
5. Rosa Unit #61
6. Basin Dakota
7. Rio Arriba NM
8. 77.0 million cubic feet
9. November 1, 1979
10. Northwest Pipeline Corporation
1. 80-05426/NM-3502-79-2
2. 30-045-22990-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. Taylor #1R
6. Aztec
7. San Juan NM
8. 28.0 million cubic feet
9. November 1, 1979
10. El Paso Natural Gas Company
1. 80-05427/NM-3500-79
2. 30-045-22950-0000-0
3. 103 000 000
4. Amoco Production Company
5. UTE Indians A #12
6. UTE Dome Dakota
7. San Juan NM
8. 128.0 million cubic feet
9. November 1, 1979
10. Gas Company of New Mexico
1. 80-05428/NM-3439-79
2. 30-039-21594-0000-0
3. 103 000 000
4. Amoco Production Company
5. Valencia Canyon Unit #26
6. Choza Mesa
7. Rio Arriba NM
8. 200.0 million cubic feet
9. November 1, 1979
10. El Paso Natural Gas Company
1. 80-05436/NM-3643-79
2. 30-025-04351-0000-0
3. 108 000 000 Denied
4. Warrior Inc
5. Federal D Account B #7
6. Eumont Yates Seven Rivers Queen
7. Lea NM
8. 13.0 million cubic feet
9. November 6, 1979
10. Phillips Petroleum Co
1. 80-05437/NM-3642-79
2. 30-025-04340-0000-0
3. 108 000 000 Denied
4. Warrior Inc
5. Federal D Account B #11
6. Eumont Yates Seven Rivers Queen
7. Lea NM
8. 10.0 million cubic feet
9. November 6, 1979
10. Phillips Petroleum Co
1. 80-05438/NM-3823-79
2. 30-045-05904-0000-0
3. 108 000 000 Denied
4. Supron Energy Corporation
5. Newsom #12
6. Ballard Pictured Cliffs
7. San Juan NM
8. .0 million cubic feet
9. November 6, 1979
10. Gas Company of New Mexico
1. 80-05439/NM-3832-79
2. 30-045-07584-0000-0
3. 108 000 000 Denied
4. Supron Energy Corporation
5. Zachry #6
6. Aztec Pictured Cliffs
7. San Juan County NM
8. .0 million cubic feet
9. November 6, 1979
10. Southern Union Gathering Company
1. 80-05440/NM-3724-79
2. 30-041-10506-0000-0
3. 108 000 000 Denied
4. Tenneco West Inc
5. Federal 24 #2
6. Chaveroo San Andres
7. Roosevelt NM
8. 4.8 million cubic feet
9. November 6, 1979
10. Cities Service Oil Company
1. 80-05449/NM-3824-79
2. 30-045-05913-0000-0
3. 108 000 000 Denied
4. Supron Energy Corporation
5. Newsom B-3
6. Ballard Pictured Cliffs
7. San Juan County NM
8. 10.4 million cubic feet
9. November 6, 1979
10. Gas Company of New Mexico

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 17, 1979.

Please reference the FERC Control Number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36944 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-48]

Lawrenceburg Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 26, 1979.

Take notice that Lawrenceburg Gas Transmission Corporation (Lawrenceburg) on November 14, 1979, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, as follows:

Third Revised Sheet No. 20
Second Revised Sheet No. 20A
Second Revised Sheet No. 20B
First Revised Sheet No. 20C
Original Sheet No. 20D
Original Sheet No. 20E
Original Sheet No. 20F
Original Sheet No. 20G
Original Sheet No. 20H

Lawrenceburg states that the foregoing tariff sheets effective December 1, 1979, are being filed to revise the provisions of Section 2 (Purchased Gas Cost—Rate Adjustment) of Lawrenceburg's tariff and to establish a new Section 3 (Incremental Pricing Provision) to reflect the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978 as set forth in Order No. 49, Final Rule, issued September 28, 1979 at Docket No. RM79-14.

Copies of the filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36945 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. E-8494 and E-9502]

Minnesota Power & Light Co.; Compliance Filing

November 26, 1979.

The filing Company submits the following:

Take notice that on November 5, 1979, Minnesota Power and Light Company (MPL) submitted compliance filings in response to the Commission's letter order of October 4, 1979 in Docket No. E-9502, and its October 15, 1979 "Order Directing Compliance" in Docket No. E-8494.

Since MPL has been required to change the billing demands and demand charges in Docket No. E-8494, the amounts that it originally refunded to its wholesale customers are incorrect. MPL, therefore, proposes to net these differences against its refund obligations to its customers in Docket No. E-9502.

A copy of these filings have been sent to all of MPL's jurisdictional customers.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 17, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36946 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-16]

Panhandle Eastern Pipe Line Co.; Change in Tariff

November 26, 1979.

Take notice that on November 15, 1979 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following Revised Tariff Sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 43-7
First Substitute Original Sheet No. 43-8

An effective date of December 1, 1979 is proposed. Panhandle states that such revised tariff sheets are filed pursuant to Section 282.601 of the Commission's Regulations and following discussions with the Commission Staff.

On September 28, 1979 the Commission issued Order No. 49 in subject docket establishing the Final Rule implementing the incremental pricing provisions of the Natural Gas Policy Act of 1978. Section 282.601 of the Commission's Regulations as established under Order No. 49 require interstate pipelines to revise its current PGA tariff provisions and establish Incremental Pricing Surchange tariff provisions in accordance with the Incremental Pricing Regulations.

Panhandle states that copies of its filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Dec. 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36947 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-14]

Public Utility District No. 1 of Cowlitz County; Application for Exemption

November 26, 1979.

Take notice that Public Utility District No. 1 of Cowlitz County (Cowlitz PUD), on October 30, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirements to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Cowlitz PUD states that it should not be required to file the specified data because "the absence of the data reporting as required under Section 133 would not adversely affect the conduct of any participant to a rate proceeding in that the requested information is either already available or of such a nature as to not be pertinent to the local case."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 15, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36948 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-49]

Southern Natural Gas Co.; Proposed Rate Increase

November 26, 1979.

Take notice that Southern Natural Gas Company (Southern) on November 19, 1979, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 that will result in a jurisdictional rate increase of approximately $102,500,000. Southern states that the rate increase reflects only increases in the cost of purchasing regasified LNG from Southern Energy Company. On January 1, 1980, Southern Energy's cost of LNG from El Paso Algeria will increase to reflect the increase in price from 154.89¢ per MMBtu to 194.34¢ per MMBtu El Paso Algeria will pay Sonatrach. The current price level of 154.89¢ per MMBtu includes a surcharge of 39.89¢ per MMBtu that will terminate on December 31, 1979. Thus, Southern's price increase of $102,500,000 is measured from an LNG price level of 115.00¢ per MMBtu which does not include the surcharge. When measured on the basis of the rate level to be effective with Southern's January 1, 1980 PGA and the currently effective LNG rate of 154.89¢ per MMBtu the resulting increase is $50,600,000.

Copies of the filing have been served upon Southern's jurisdictional customers

and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 10, 1979.Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36949 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP72-121]

Southwest Gas Corp.; Proposed Changes in FERC Gas Tariff

November 26, 1979.

Take notice that on November 16, 1979, Southwest Gas Corporation ("Southwest") filed, pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, First Revised Sheet No. 32A of its FERC Gas Tariff, Original Volume No. 1. Southwest states that the purpose of its filing is to conform Southwest's existing Purchased Gas Adjustment Clause to function 154.38(3)(4)(iv)(c), as amended by the Commission in its Order No. 47 issued September 10, 1979 in Docket No. RM77-22.

Southwest has requested that the Commission grant such waiver of its Regulations as may be necessary in order to accept the tendered tariff sheets for filing and permit these to become effective as of October 1, 1979, inasmuch as the new rule on computing carrying charges on Account 191 balances become effective on such date.

Southwest states that copies of the filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard, or to protest said filing, should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36950 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-17]

Trunkline Gas Co.; Change in Tariff

November 26, 1979.

Take notice that on November 15, 1979 Trunkline Gas Company (Trunkline) tendered for filing the following Revised Tariff Sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 21-O.
First Substitute Original Sheet No. 21-P.

An effective date of December 1, 1979 is proposed, Trunkline states that such revised tariff sheets are filed pursuant to Section 282.601 of the Commission's Regulations and following discussions with the Commission Staff.

On September 28, 1979 the Commission issued Order No. 49 in subject docket establishing the Final Rule imnplenting the incremental pricing provisions of the Natural Gas Policy Act of 1978. Section 282.601 of the Commission's Regulations as established under Order No. 49 require interstate pipelines to revise its current PGA tariff provisions and establish Incremental Pricing Surcharge tariff provisions in accordance with the Incremental Pricing Regulations.

Trunkline states that copies of its filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36951 Filed 11-29-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 24, 1979 Through August 31, 1979

Notice is hereby given that during the week of August 24, 1979 through August 31, 1979, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

November 21, 1979.

List of Cases Received by the Office of Hearings and Appeals

[Week of Aug. 24 through Aug. 31, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 24, 1979	H & H Manhattan, New York, New York	DEE-7971	Price Exception. If granted: H & H Manhattan would be granted an exception from the provisions of 10 CFR Part 430, permitting the firm to sell motor gasoline above the applicable ceiling price.
Aug. 24, 1979	Marathon Oil Company, Findlay, Ohio	DED-6387	Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company in regard to U.S. Oil Company's Application for Exception.
Aug. 24, 1979	Texaco (Saber), White Plains, New York	DEA-0609	Appeal of Allocation Order. If granted: The June 29, 1979, Allocation Order issued to Saber Refining Company by the Economic Regulatory Administration regarding its application for an Emergency Supplemental Allocation under the Buy/Sell Program would be rescinded.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Aug. 24 through Aug. 31, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 24, 1979	Texaco (Tipperary), White Plains, New York	DEA-0611	Appeal of Allocation Order. If granted: The June 29, 1979, Allocation Order issued by the Economic Regulatory Administration to Tipperary Refining Company regarding its Application for Emergency Supplemental Allocation under the Buy/Sell Program would be rescinded.
Aug. 24, 1979	Texaco (United) Refining Company, White Plains, New York.	DEA-0608	Appeal of Allocation Order. If granted: The June 29, 1979, Allocation Order issued by the Economic Regulatory Administration to United Refining Company regarding the firm's application for an Emergency Supplemental Allocation under the Buy/Sell Program would be rescinded.
Aug. 24, 1979	Texaco (Western Refining Company), White Plains, New York.	DEA-0610	Appeal of Allocation Order. If granted: The June 29, 1979, Allocation Order issued by the Economic Regulatory Administration to Western Refining Company regarding the firm's Application for Emergency Supplemental Allocation under the Buy/Sell Program would be rescinded.
Aug. 27, 1979	Akin, Gump, Hauer & Feld, Washington, D.C	DFA-0615	Appeal of Denial of Information Request. If granted: The July 27, 1979, denial of a Request for Information would be rescinded, and requested information would be released to Akin, Gump, Hauer & Feld.
Aug. 27, 1979	Chevron USA, Inc. (Kingsport Fuels), San Francisco, California.	DEA, DES, DST-0606.	Appeal, Stay, Temporary Stay of Assignment Order. If granted: The June 28, 1979, Assignment Order issued by ERA Region IV to Kingsport Fuels, Inc., increasing Chevron USA, Inc.'s supply obligations to the firm would be rescinded. Chevron USA would be granted a stay and temporary stay pending a final determination of its appeal.
Aug. 27, 1979	Chevron USA, Inc. (Mountain), San Francisco, California.	DEA, DES, DST-0605.	Appeal of Assignment Order, Request for Stay and Temporary Stay. If granted: The June 28, 1979, Assignment Order issued by the ERA Region IV to Mountain Empire Oil Company, increasing Chevron USA, Inc.'s supply obligations to the firm, would be rescinded. Chevron USA would be granted a stay and temporary stay pending a final determination on its Appeal.
Aug. 27, 1979	Cortlandt Servicenter, East Bronx, New York	DEE-7996	Price Exception. If granted: Cortlandt Servicenter would be granted an exception from the provisions of 10 CFR Part 212, permitting it to sell motor gasoline above the applicable ceiling price.
Aug. 27, 1979	Edwin L. Cox, Jefferson Davis Parish, Louisiana	DXE-7976	Price Exception. If granted: Edwin L. Cox would be permitted to continue to sell crude oil from the Seward LeJeune Lease in Jefferson Davis, Louisiana, at higher prices than permitted by 10 CFR 212.73.
Aug. 27, 1979	Arthur Destefano, Miami, Florida	DEE-7970	Exception to Emergency Building temperature Restrictions. If granted: Arthur Destefano would receive an exception from the provisions of 10 CFR Part 430, the Emergency Building Temperature Restrictions.
Aug. 27, 1979	Exxon Company, USA, Washington, D.C	DEA-0614	Appeal of Assignment Order. If granted: The July 25, 1979 Assignment Order, issued by the Economic Regulatory Administration to Exxon Company, USA, increasing its supply obligations to Triangle Refining Corporation, would be rescinded.
Aug. 27, 1979	Gulf Oil Corporation, Houston, Texas	DEA-0613	Appeal of Assignment Order. If granted: The July 13, 1979, Assignment Order issued to Gulf Oil Corporation by ERA Region V, increasing Gulf Oil Corporation's supply obligations to Safedine, Inc., would be rescinded.
Aug. 27, 1979	Shell Oil Company (Rudy Brother), Houston, Texas.	DEA-0612	Appeal of Assignment Order. If granted: The August 2, 1979, Assignment Order issued by Economic Regulatory Administration Region X to Rudy Brothers increasing its supply of motor gasoline from Orling Feed and Supply would be modified.
Aug. 27, 1979	Shell Oil Company (Maury Island), Houston, Texas.	DEA-0631	Appeal of an Assignment Order. If granted: The August 2, 1979, Assignment Order issued by Economic Regulatory Administration Region X to Williams Hearing Oil, a Shell jobber, increasing its supply obligations to Maury Island Farming Company would be rescinded.
Aug. 27, 1979	Shell Oil Company (Modern Valley Dairy), Houston, Texas.	DEA-0517	Appeal of an Assignment Order. If granted: The August 3, 1979, Assignment Order issued by Economic Regulatory Administration Region X to Orling Feed & Supply, a Shell distributor, increasing supply obligations to Modern Valley Dairy would be <rescinded.
Aug. 27, 1979	True Oil Purchasing Company, Casper, Wyoming	DRH-0070	Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened with respect to the Statement of Objections submitted by True Oil Purchasing Company in response to a Proposed Remedial Order (DRO-0264) issued to Inexco Oil Company.
Aug. 28, 1979	33rd Street Amoco, Orlando, Florida	DEA-0618	Appeal of Assignment Order If granted: The July 26, 1979, Assignment Order issued by the Economic Regulatory Administration Region IV, regarding the firm's base period assignment of motor gasoline would be rescinded.
Aug. 28, 1979	Champlin Petroleum, Fort Worth, Texas	DEE-7999	Price Exception. If granted: Champlin Petroleum would be permitted to continue to sell crude oil produced from the State of Mexico 18 lease, located in Lea County, New Mexico, at higher prices than permitted by 10 CFR Part 212.
Aug. 28, 1979	Deminex US Oil Company, Dallas, Texas	DEE-7994	Exception to the Filing Requirements. If granted: Deminex US Oil Company would not be required to file Form EIA-149.
Aug. 28, 1979	Hawaii Automotive, Honolulu, Hawaii	DEE-3662	Price Exception. If granted: Hawaii Automotive would be granted an exception from the provisions of 10 CFR Part 212, permitting the firm to sell motor gasoline for higher prices than the applicable ceiling price.
Aug. 28, 1979	S & S Gulf Service, Upper Nyack, New York	DEE-7958	Price Exception. If granted: S & S Gulf Service would be granted an exception from the provisions of 10 CFR Part 212, permitting the firm to sell motor gasoline at a higher price than the applicable ceiling price.
Aug. 28, 1979	Site Oil Company/Flash Oil Corporation, Washington, D.C.	DSG-0062	Petition for Special Redress. If granted: The DOE would review a denial by the Chief of the Crude Products Management Branch, Central Enforcement District, Region VII, of a request on behalf of Site Oil Company/Flash Oil Corporation for a 30-day extension of time to respond to a Notice of Probable Violation.
Aug. 28, 1979	Texas Independent Producers, Houston, Texas	DEE-7997	Price Exception. If granted: The Texas Independent Producers would receive an exception from the provisions of 10 CFR Part 212 regarding the certification provisions of the Mandatory Petroleum Price Regulations.
Aug. 28, 1979	Vantage Petroleum Corporation, Bohemia, New York.	DEE-7968	Allocation Exception. If granted: Vantage Petroleum Corporation would receive an increased allocation of unleaded motor gasoline for the purposes of blending gasohol.
Aug. 29, 1979	Atlantic Richfield Company, Los Angeles, California	DRZ-0006	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Braintree Electric Light Company, Braintree, Massachusetts.	DFA-0574	Appeal of Information Request Denial. If granted: The August 9, 1979, denial of an Information Request, issued by the Office of Enforcement NE District, ERA, would be rescinded and requested information would be released to Braintree Electric Light.
Aug. 29, 1979	C J Associates, Walnut Creek, California	DEE-8002	Allocation Exception. If granted: C J Associates would be granted an exception from the provisions of 10 CFR Part 211 and the firm would receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Aug. 29, 1979	Gulf Oil Corp., Houston, Texas	DRZ-0007	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Louisiana Land & Exploration Co., New Orleans, Louisiana.	DRZ-0005	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Marathon Oil Company, Findlay, Ohio	DRZ-0008	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.

List of Cases Received by the Office of Hearings and Appeals—Continued

Date	Name and location of applicant	Case No.	Type of submission
Aug. 29, 1979	Marathon Oil Company, Washington, D.C.	DEA-0621	Appeal of Four Assignment Orders. If granted: Four July 30, 1979, Assignment Orders issued by the Economic Regulatory Administration Region IV to Marathon Oil Company increasing the firm's supply obligations to William Pitts Oil Co., Inc., Palm Beach Oil Co., Inc., Powell Oil Co., and Gilbreath Oil Company would be rescinded.
Aug. 29, 1979	Miller & Chevalier, Washington, D.C.	DFA-0617	Appeal of Information Request Denial. If granted: The August 6 denial of an Information Request issued by the General Counsel of DOE to Miller and Chevalier would be rescinded, granting the firm access to documents in connection with Interpretation 1977-53, issued to Union Oil Company.
Aug. 29, 1979	Mobil Oil Corporation, Dallas, Texas	DES-0577	Request for Stay. If granted: The June 26, 1979, Assignment Order issued by Economic Regulatory Administration Region VII to Mobil Oil Corporation increasing its supply obligations to Onyx Corporation would be stayed.
Aug. 29, 1979	San Joaquin Refining Company, Newport Beach, California.	DEX-0201	Supplemental Order. If granted: The DOE would review the level of exception relief granted in a Decision and Order issued to San Joaquin Refining Company (Case No. DXE-1977) to determine whether the relief accorded the firm was appropriate.
Aug. 29, 1979	Standard Oil Company of California, San Francisco, California.	DRZ-0009	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Standard Oil Company of Indiana, Chicago, Illinois	DRZ-0011	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Standard Oil Company of Ohio, Cleveland, Ohio	DRZ-0010	Interlocutory Order. If granted: The DOE would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Standard Oil Company of Ohio, Cleveland, Ohio	DRZ-0025	Interlocutory Order. If granted: Sohio would be permitted to depose Mr. Robert G. Rives, Team Leader in the Office of Special Counsel's Crude Production Audit Division.
Aug. 29, 1979	Texaco, Inc., White Plains, New York	DRZ-0004	Interlocutory Order. If granted: OHA would issue an interlocutory order setting forth further discovery proceedings involving the firm.
Aug. 29, 1979	Union Carbide Caribe, Inc., New York, New York	DMR-0070	Request for Modification/Rescission. If granted: The DOE's August 15, 1979, Decision and Order (Case Nos. DEE-2245, DEE-2213, and DEE-3148) would be modified regarding the Naphtha Entitlements Rule, 10 CFR 211.67(d)(5).
Aug. 30, 1979	Crown Oil & Wax Company, Frederick, Maryland	DEE-8029	Exception. If granted: Crown Oil & Wax Company would be allowed to discontinue a prior practice of accepting Shell Oil Company credit cards from its various dealers as a form of immediate cash for the dealer's purchase of gasoline.
Aug. 30, 1979	Lehigh Oil Company, Inc., Norwich, Connecticut	DST-0069	Request for Temporary Stay. If granted: The August 22, 1979 Assignment Order issued by Economic Regulatory Administration Region I to Lehigh Oil Company, Inc. increasing its supply of obligations to retail outlets would be stayed.
Aug. 31, 1979	Exxon Company, Washington, D.C.	DEA-0616, DES-0616.	Request for Stay, Appeal of Assignment Order. If granted: The June 30, 1979, Assignment Order, issued by the Economic Regulatory Administration to Exxon Company increasing the firm's supply obligations to Newman Oil Company would be rescinded. The firm would receive a stay pending a final determination on its Appeal.

Notices of Objection Received

[Week of August 24, 1979 through August 31, 1979]

Date	Name and Location of Applicant	Case No.
8/27/79	Ball Shell Service, Asheville, NC	DEE-6156
8/27/79	West Tire Corp., Mechanicsville, VA	DEO-0354
8/27/79	Baldwin, Ray B., Region VI	DEO-0353
8/17/79	Lake Wright Texaco, Richmond, VA.	DEE-2685
8/29/79	Teledyne Lears, Westlake Village, CA.	DEE-3950
8/29/79	Raypak, Inc., Westlake Village, CA	DEE-3439
8/29/79	Stothard Corporation, Washington, D.C.	DEE-3990
8/27/79	Double B Oil, Inc., Wichita, Kansas	DEE-5070

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of August 24 through August 31, 1979

If granted, the following firms would receive an exception from the activation of the standby petroleum product allocation regulations with respect to motor gasoline.

August 24, 1979

Amerada Hess Corp., DEE-7979, District of Columbia.
Seymour Volunteer Fire Depart., DEE-7959, Tennessee.
Skee's Exxon, DEE-7960, North Carolina.

August 27, 1979

Crossroads Gulf Service Station, DEE-7619, Virginia.
Domingo Guevedo, DEE-7979, Texas.
Golden Cross Ambulance, DEE-7962, New Hampshire.
Halafax County, DEE-7984, North Carolina.
Jim Quinn's Texaco, DEE-7985, Pennsylvania.
Owl Construction Co., DEE-7980, California.
Pop's Country Store, DEE-7981, Georgia.
Robert Winston Sunoco, DEE-7961, Massachusetts.
Telacu, DEE-7982, California.

August 28, 1979

Bill Johnson's Chevron Service, DEE-7992, California.
C & S Grocery Co., DEE-7987, Georgia.
Carol Davis Mini-Market, DXE-7977, California.
E. J. Letard Distributors, DEE-8005, Louisiana.
Empire Container Corp., DEE-7991, California.
Geebey, James E. Jr., DEE-8001, Pennsylvania.
Navy Exchange, DEE-7990, Connecticut.
Pembek Oil Corporation, DEE-7986, Connecticut.
S & S Petroleum Sales, Inc., DXE-7876, Texas.
Union Oil Co. of Calif., DEE-8021, District of Columbia.
Union Oil of Ca., DEE-8000, District of Columbia.
Village Blacksmith Chevron, DEE-7949, Massachusetts.
White's Exxon, DEE-7995, Kentucky.

August 29, 1979

Four Rose Fuels, DEE-8003, Wyoming.
Herb's Amoco, DEE-8063, District of Columbia.
Ralph Watson Oil Co., Inc., DEE-8006, Texas.
Tindal Aviation, DEE-8004, Mississippi.

August 30, 1979

Burke, John P., DEE-8047, Massachusetts.
Dailey's Service Station, DEE-8009, Georgia.
Donabedian Brothers, DEE-8011, New Hamsphire.
Empire Pipe's Development, Inc., DEE-8010, Florida.
Green Front Service Station, DEE-8013, North Carolina.
John Chevron Service, DEE-8006, California.
Minit Man Auto Mash, DEE-8048, Michigan.
Tamarack Lodge, DEE-8012, California.

August 31, 1979

Bayside Marine Corp., DEE-7689, Massachusetts.
Donahue's Country Store, DEE-8014, Pennsylvania.

Fred & Joe's Arco, DEE–8059, California.
Joe's Auto Service Center, DEE–7627, Florida.
Merced Taxi, DEE–8060, California.
Tillman's Plumbing Corp., DEE–8058, Florida.
Warner Hot Springs Resort, DEE–8016, California.

Items retrieved—44

[FR Doc. 79–36953 Filed 11–29–79; 8:45 am]
BILLING CODE 6450–01–M

Cases Filed; Week of August 31, 1979 through September 7, 1979

Notice is hereby given that during the week of August 31, 1979 through September 7, 1979, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

List of Cases Received by the Office of Hearings and Appeals

[Week of August 31, 1979 through September 7, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 31, 1979	Buckeye Petrofuels Company, Corapolis, Pennsylvania.	DEE–8015	Allocation Exception. If granted: Buckeye Petrofuels Company would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive unleaded gasoline for the purpose of blending gasohol.
Aug. 31, 1979	Chevron U.S.A., Inc., San Francisco, California	DEE–8033	Price Exception (212.73, 211.67(b)). If granted: Chevron U.S.A., Inc. would be permitted to sell the crude oil produced from the Greely Unit, located in Kern County, California, at upper tier ceiling prices and to reclassify it for entitlements purposes.
Aug. 31, 1979	Daily & Sunday Herald, Roanoke Rapids, North Carolina.	DEE–8027	Exception from Emergency Building Temperature Restrictions. If granted: Daily & Sunday Herald would receive an exception from the provisions of 10 CFR Part 490, the Emergency Building Temperature Restrictions.
Aug. 31, 1979	Exxon Company, USA, Houston, Texas	DEE–0626	Appeal of Assignment Order. If granted: The August 7, 1979, Assignment Order issued by the Economic Regulatory Administration Region VI regarding Exxon Company USA's supply obligation to Jones and Brown Enterprises, Inc., would be rescinded.
Aug. 31, 1979	Government of Puerto Rico, San Juan, Puerto Rico.	DMR–0073	Request for Modification/Rescission. If granted: The DOE's Decisions and Orders in Case Nos. DEE–2245, DEE–2317, and DEE–3148, issued on August 18, 1979 would be modified with respect to the naptha entitlement rule.
Aug. 31, 1979	Oasis Petro Energy Corporation, Washington, D.C.	DEE–7983	Price Exception. If granted: Oasis Petro Energy Corporation would receive an exception from the provisions of 10 CFR Part 212, regarding the margin it receives on the resale of crude oil.
Aug. 31, 1979	Union Oil Company of California, Los Angeles, California.	DEL–5748, DEE–5748, DES–5748.	Exception; Request for Temporary Exception; Request for Stay. If granted: Union Oil Company of California would be granted a temporary exception, stay and exception from the entitlements program that would equalize its weighted average foreign crude oil costs with the weighted average foreign crude oil costs of other domestic refiners for the months of July through December 1979.
Sept. 4, 1979	Akin, Gump, Hauer & Feld, Washington, D.C.	DFA–0627	Appeal from Denial of Information Request. If granted: Akin, Gump, Hauer & Feld would receive access to certain DOE data.
September 4, 1979	Card Mart, Owings Mills, Maryland	DEE–8025	Exception from Emergency Building Temperature Restriction. If granted: Card Mart would receive an exception from the provisions of 10 CFR Part 490, the Emergency Building Temperature Restrictions.
September 4, 1979	Commonwealth Oil Refining Company, Inc., Sam Antonio, Texas.	DEE–8020, DSG–0063.	Petition for Special Redress. If granted: Commonwealth Oil Refining Company, Inc. would receive an exception or special redress relief which would enable it to obtain the crude oil supplies necessary for the operation of its refinery during the months of September through December 1979. The exception would take one of the following three forms: (i) the firm would receive additional entitlement benefits each month; (ii) the firm would be placed on the monthly buy/sell list; or (iii) the DOE would direct one of the firm's current suppliers or customers to supply it with crude oil at that firm's average crude oil cost.
September 4, 1979	Commonwealth Oil Refining Co., Inc., San Antonio, Texas.	DES–8020, DEL–8020.	Request for Stay; Request for Temporary Exception. If granted: Commonwealth Oil Refining Co., Inc. would receive a stay or a temporary exception which would enable it to obtain the crude oil supplies necessary for the operation of its refinery during the months of September through December 1979, pending a final determination on the Application for Exception and Petition for Special Redress filed by the firm on the same date.
September 4, 1979	Commonwealth Oil Refining Co., Inc., San Antonio, Texas.	DEA–0628	Appeal of ERA Buy/Sell Sell Order. If granted: The August 30, 1979, denial of Commonwealth Oil Refining Co., Inc.'s request for an emergency allocation of crude oil under the buy/sell program would be reversed and Commonwealth Oil Refining Co., Inc., would receive such an allocation for each month from September through December 1979.
September 4, 1979	Double Eagle Drilling Company, Dallas, Texas	DEE–8032	Price Exception (212.73). If granted: Double Eagle Drilling Company would be permitted to sell the crude oil produced from the #1 Vogler Lease located in Dawson County, Texas at market prices.
September 4, 1979	Fischer Shell Station, St. Paul, Minnesota	DRS–0302	Request for Stay. If granted: Fischer Shell Station would receive a stay of a June 27, 1979, Interim Remedial Order for Immediate Compliance.
September 4, 1979	Freeway Texaco, St. Paul, Minnesota	DRS–0293	Request for Stay. If granted: Freeway Texaco would receive a Stay of the July 9, 1979 Interim Remedial Order for Immediate Compliance issued to it (Case No. DRO–0293).
Sept. 4, 1979	GAMA, Arlington, Virginia	DEE–8028	Exception from Energy Conservation Program for Consumer Products. If granted: GAMA would be granted an exception from the provisions of 10 CFR Part 430 and would be permitted to utilize different energy efficiency test procedures for its furnaces.
Sept. 4, 1979	Frederick P. Lyte, Los Angeles, California	DEE–8031	Price Exception (212.73). If granted: Frederick P. Lyte would be permitted to sell the crude oil produced from the Skeeter Slaughter No. 2 Lease located in Garza County, Texas at market prices.
Sept. 4, 1979	Maruya's 76 Bay Service, Kaneohe, Hawaii	DEE–8030	Price Exception. If granted: Maruya's 76 Bay Service would be granted an exception from the provisions of 10 CFR Part 212, permitting the firm to sell motor gasoline above the applicable ceiling price.
Sept. 4, 1979	Thos. P. Reidy, Inc., Houston, Texas	DEA–0630, DES–0630, DST–0630.	Appeal of an ERA Decision and Order; Request for stay and temporary stay. If granted: The Economic Regulatory Administration's August 2, 1979 Decision and Order permitting Powerine Oil Company to use multiple allocation fractions would be rescinded for the month of September 1979.
Sept. 5, 1979	Central Florida Gas Corporation, Winter Haven, Florida.	DEE–8022	Exception to Reporting Requirement. If granted: Central Florida Gas Corporation would not be required to file form EIA–149 "Natural Gas Supply, Requirements and Usages."

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of August 31, 1979 through September 7, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 5, 1979	City Tavern Club, Washington, D.C	DEE-8026	Exception to Emergency Building Temperature Restriction. If granted: City Tavern Club would receive an exception from the provisions of 10 CFR Part 490, the Emergency Building Temperature Restrictions.
Sept. 5, 1979	Dunaway, McCarthy, Dye & Stewart, Washington, D.C.	DSG-0064	Petition for Special Redress. If granted: The Office of Conservation and Solar Applications would be directed to release information requested in three separate fillings by Dunaway, McCarthy, Dye & Stewart.
Sept. 5, 1979	Equipment, Inc., Washington, D.C	DRS-0277	Request for Stay. If granted: The June 22, 1979, Remedial Order issued by the DOE (Case No. DRO-0121) to Equipment, Inc. would be stayed pending judicial review.
Sept. 5, 1979	Hobart Corporation, Troy, Ohio	DEE-4459	Exception from Energy Conservation Program for Consumer Products. If granted: Hobart Corporation would be granted an exception from the provisions of 10 CFR Part 430, the Uniform Test Method for Measuring the Energy Consumption of Dishwashers.
Sept. 5, 1979	J. M. Huber Corporation, Lea County, New Mexico	DXE-8069	Extension of Exception Relief. If granted: J. M. Huber Corporation would be permitted to continue to sell crude oil produced from the Pure-State No. 1 Well, located in Lea County, New Mexico, at upper tier ceiling prices.
Sept. 5, 1979	Office of Enforcement (Vickers), Washington, D.C	DFF-0006	Request for Implementation of Refund Procedures. If granted: The DOE would implement the Special Refund Procedures with respect to a May 11, 1979 Consent Order entered into between Vickers Petroleum Corporation and the Central Enforcement District.
Sept. 5, 1979	Phillips Petroleum Company, Bartlesville, Oklahoma	DMR-0074	Request for Modification/Rescission. If granted: The August 15, 1979 Decision and Order issued to Phillips Petroleum Company would be modified with respect to the Naphtha Entitlements Rule and to the provisions of 10 CFR 211.67.
Sept. 5, 1979	Sun Ray Drive-In Dairy, Inc., Boise, Idaho	DEE-8023	Allocation Exception. If granted: Sun Ray Drive-In Dairy, Inc. would be granted an exception from the provisions of 10 CFR Part 211 and would receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Sept. 5, 1979	Universal Mineral Corporation, Dallas, Texas	DXE-6938	Price Exception (212.73). If granted: Universal Mineral Corporation would be permitted to continue to sell crude oil produced from the Humble-Dowdy Fee Lease, located in Duval County, Texas at upper tier ceiling prices.
Sept. 5, 1979	United Refining Company, Warren, Pennsylvania	DEE-8024	Price Exception. If granted: United Refining Company would receive an exception from the provisions of 10 CFR Part 212 permitting the firm to pass through incremental expenses relating to the blending, storage, distribution and marketing of gasohol.
Sept. 6, 1979	American Petrofina, Inc., Washington, D.C	DMR-0072	Request for Modification/Rescission. If granted: The DOE's August 29, 1979 Decision and Order (Case No. DEL-5568) issued to Fina Jobbers Association, Inc., regarding supply obligations of American Petrofina, Inc., would be modified.
Sept. 6, 1979	Crown Central Petroleum Corporation, Baltimore, Maryland.	DES-0279	Request for Stay. If granted: Crown Central Petroleum Corporation would receive a stay of the 30-day appeal period in regard to an Assignment Order issued by the Economic Regulatory Administration Region II, regarding its supply obligations.
Sept. 6, 1979	Priest Explorations, Inc., Seminole County, Oklahoma.	DEE-8067, DEE-8068.	Price Exception (212.73). If granted: Priest Explorations, Inc., would be permitted to sell crude oil produced from the Choate and the Barnes Leases located in Seminole County, Oklahoma at upper tier ceiling prices.
Sept. 6, 1979	Western Refining Company, Denver, Colorado	DES-0278	Request for Stay. If granted: Western Refining Company would receive a stay for the month of June 1979 of the provisions of 10 CFR Part 211, regarding its entitlements purchase obligations.
Sept. 6, 1979	Yates Petroleum Corp., Artesia, New Mexico	DEE-8066	Exception to Reporting Requirements. If granted: Yates Petroleum Corporation would be granted an extension of time in which to file Form EIA-23.
Sept. 7, 1979	Texaco, Inc., White Plains, New York	DEA-0607	Appeal of ERA Decision and Order. If granted: The July 31, 1979 Decision and Order issued by the Economic Regulatory Administration to Golden Eagle Refining Company regarding the supply obligations of Texaco, Inc., to the firm would be modified.

November 20, 1979.

Melvin Goldenstein,

Director, Office of Hearings and Appeals.

Notices of Objection Received

[Week of Aug. 31 to Sept. 7, 1979]

Date	Name and location of applicant	Case No.
9/7/79	739 Corporation, Milford, PA	DEO-0367
9/6/79	Mid-City Exxon, Monroe, LA	DEO-0370
9/6/79	Gentilly Shell, New Orleans, LA	DEO-0368
9/4/79	U-Needa Car Wash, Inc., Woodlyn, PA.	DEO-0358
8/31/79	Chevron USA, San Francisco, CA	DEE-5818
8/31/79	Chevron USA, San Francisco, CA	DEE-5819
9/4/79	Brent-West Car Wash, Inc. West Los Angeles, CA.	DEE-4531
9/4/79	Uresti Texaco Service, Bellaire, TX	DEO-0364
8/31/79	Ray Andre, Inc., Butler, PA	DEO-0366
9/6/79	Baldwin, R. B., Jasper, TX	DEO-0363
8/31/79	Nuszan, Alex, Patchogue, NY	DEO-0365
9/5/79	Bainbridge Shell, Chagrin Falls, OH.	DEO-0371
9/5/79	Husky Oil Company, Denver, CO	DEE-1435 DEE-1441 DEE-1442
9/6/79	Broadway Snack Shop, Hopewell, VA.	DEO-0245

List of Cases Involving the Standby Petroleum Product Allocation Resulations for Motor Gasoline

eek of August 31 Through September 1979

If granted: The following firms would receive an exception from the activation of the standby petroleum product allocation resulations with respect to motor gasoline.

August 31, 1979

Bayside Marine Corp., DEE-7689, Massachusetts.
Donahue's Country Store, DEE-8014, Pennsylvania.
Fred & Joe's Arco, DEE-8059, California.
Joe's Auto Serive Center, DEE-7627, Florida.
Merced Taxi, DEE-8060, California.
Tillman's Plumbing Corp., DEE-8058, Florida.
Warner Hot Springs Resort, DEE-8016, California.

September 4, 1979

Anderson's Arco, DEE-8017, California.
B & T Arco Service Station, DEE-8044, California.
Coastal Center " 66 " Service, DEE-8051, South Carlina.
Glenn's Gulf Station, DEE-8019, Louisiana.
Jim's First Street Standard, DEE-8056, Minnesota.
Ken May's Mr. Discount Drugs, DEE-8055, Mississippi.
Lake County, DEE-8046, California.
Lankford's 66 Serive, DEE-8045, Tennessee.
McConnellsburg Amoco, DEE-8052, Pennsylvania.
MCGrath, Robert J., DEE-8053, California.
Pellum's Amoco, DEE-8018, South Carolina.
School Brd. of Pinellas County, DEE-8042, Florida.
Sharp Texaco, DEE-8054, California.
Thompson Brother's Exxon, DEE-8049, Kentucky.
Wake County, Chap. Am. Red Cross, DEE-8057, North Carolina.
Wea Markets, DEE-8050, Wyoming.

Woods Produce, DEE-8043, California.

September 5, 1979

Amos Post, Inc., DEE-8062, New York.
Avis Rent-A-Car, DEE-8038, Wisconsin.
Bud Lutz Shell Service, DEE-8035, Ohio.
Checker Cab Co., DEE-8072, Nevada.
City of Westfield, Mass., DEE-8040, Massachusetts.
Far North Oil, DEE-8039, Minnesota.
Farmland Industries, Inc., DEE-8061, Missouri.
Foster's Exxon, DEE-4991, North Carolina.
John E. Jones Oil Co., Inc., DEE-8036, Kansas.
Pollock-Collins Oil Co., Inc., DEE-7497, Alabama.
Providence Gas Co., DEE-8041, Rhode Island.
Rick's Service, DEE-8037, Kentucky.

September 6, 1979

Bonham Brothers, DEE-8065, Virginia.
Crown Central Petroleum Cor., DEE-6452, New York.
P & P Market, DEE-8314, Tennessee.
Modges Oil & Gas, DEE-8082, Indiana.
Minnesota Energy Agency, DEE-8034, Minnesota.
Mick & Paul's Auto Service Service, DEE-8071, Nevada.
Spartan Sener Raider, Inc., DEE-4454, Maryland.

September 7, 1979

Amarillo 76 Truck Stop, DEE-8073, Texas.
J. A. Nere Co., Inc., DEE-8091 Virginia.
Marina South Carwash, DXE-8075, California.
Rapid Service Oil Co., Inc., DXE-8076, Wisconsin.
Records Sohio Serive, DEE-8074, Ohio.

Items Retrieved: 48.

[FR Doc. 79-36954 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

Class Exception for Certain Motor Gasoline Wholesale Purchaser-Resellers; Issuance of Decision and Order

On October 22, 1979, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order approving exception relief for a class consisting of certain wholesale purchaser-resellers of motor gasoline. The effect of the exception is to extend for an additional period of time exceptions previously granted from the DOE mandatory allocation regulations.

The exception proceeding involves recent changes made by the DOE in the allocation regulations to revise the base period upon which motor gasoline allocation entitlements of wholesale purchaser-resellers are based. *See* 44 FR 42,538 (1979); *see also* Interim Final Rule, 44 FR 26,712 (1979); Standby Regulation Activation Order No. 1, 44 FR 11,202 (1979). The Office of Hearings and Appeals has, since the original announcement of the changes in the base period in February 1979, received several thousand requests for exception relief from firms claiming to be adversely affected. Exception relief has been granted in a great number of cases, the relief in general taking the form of increased allocations for the applicant. However, in most cases the relief granted expired on September 30, 1979, the expiration date of the interim amendments to the allocation regulations, which were in effect at the time the requests were approved. Because the interim amendments have now been made permanent, it has become necessary for the Office of Hearings and Appeals to consider requests for the extension of the limited exceptions approved earlier.

In considering requests for exception from the amended allocation regulations, the Office of Hearings and Appeals has, as indicated on previous occasions, identified several common factual patterns. *See Class Exception Proceeding Concerning Extension of Relief Previously Granted in Certain Motor Gasoline Allocation Cases,* DOE Case No. DEE-6565, (June 18, 1979). The Office of Hearings and Appeals has found it useful in evaluating the large number of extension requests that it has received to utilize the procedural device of a class proceeding. It has been possible to do this in those instances in which a class can be identified as one involving a common condition that is likely to be of a continuing nature. *Id.* Employment of the class proceeding format has enabled the Office of Hearings and Appeals to treat this type of request more expeditiously than would otherwise be possible.

One class of exception requests that the Office of Hearings and Appeals has identified in prior decisions is known as the *Anger* class. The designation of this class derives from the case of *Leo Anger, Inc.,* DOE Case No. DEE-2326 (June 18, 1979). In general, the *Anger* class involves firms granted exception relief because they had made substantial capital investments with the expectation of increasing their motor gasoline sales. However, the changes in the base period made it impossible for them to realize the benefit of that investment. The *Anger* class is the class involved in the present proceeding.

For the reasons set forth below in the class exception decision, the Office of Hearings and Appeals has concluded that the circumstances that formed the basis for approving exception relief to firms in the *Anger* class were of a type that in general are likely to continue to exist. It was therefore determined that exception relief should be extended to certain members of the class who had requested extensions of relief. As described more fully below, the class includes any firm to which a final decision and order or a proposed decision and interim order has been issued adjusting a base period use of motor gasoline on the basis of the principles set forth in *Leo Anger, Inc.* Excluded from the class receiving relief, however, were those firms for which an exception has been proposed but objected to by an aggrieved party.

Because it was recognized that not all firms in the class might continue to be entitled to exception relief, the Office of Hearings and Appeals has incorporated in the class exception decision certain reporting requirements designed to monitor the condition of the firms in the class. Special statements must be filed by July 31, 1980 with the appropriate Hearing and Appeals Regional Center or with the National Office of Hearings and Appeals indicating the financial position for the twelve-month period ending June 30, 1980 of each recipient of exception relief under the class exception decision.

For further information concerning the decision contact:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. (202) 632-6587

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Issued in Washington, D.C., November 20, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

October 22, 1979.

Decision and Order of the Department of Energy

Docket designation: Second class exception proceeding involving extension of relief in certain motor gasoline allocation cases.

Case No. DXE-8261.

On May 1, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued an Interim Final Rule (the Interim Rule) which finalized certain proposed rules with respect to the allocation of motor gasoline. 44 Fed. Reg. 26712 (May 4, 1979) *see also* Standby Regulation Activation Order No. 1, 44 Fed. Reg. 11202 (February 28, 1979) (Activation Order). In the Interim Rule, which was made effective through September 30, 1979, the corresponding month of the period from November 1977 through October 1978 was designated as the base period for purposes of allocating motor gasoline. Since the time the Activation Order first implemented the updated base period for motor gasoline, the DOE Office of Hearings and Appeals (OHA) has received more than 7,000 applications for relief from regulatory requirements relating to the new base period.

Exception relief, implemented either through interim orders or final exception decisions, has been granted with respect to many submissions, allowing applicants to receive additional volumes of motor gasoline.

Relief that was granted under the Interim Rule was generally limited to the period ending September 30, 1979, the expiration date of that rule. In addition to the relief granted to individual applicants, the Office of Hearings and Appeals, on June 18, 1979, issued a class exception extending through September 30, 1979 the exception relief that had previously been granted to 54 firms. *See Class Exception Proceeding Concerning Extension of Relief Previously Granted in Certain Motor Gasoline Allocation Cases,* 3 DOE Par.—(June 18, 1979) (Class Extension).

The base period for the allocation of motor gasoline that was established in the Interim Rule, November 1977 through October 1978, was made permanent in amendments to the Mandatory Petroleum Allocation Regulations that ERA issued on July 15, 1979. *See* 44 FR 45238 (July 19, 1979). Many of the firms which received exception relief through September 30, 1979 claim they are now experiencing continuing motor gasoline supply problems, and have applied for an extension of exception relief. Accordingly, we must decide whether the exception relief which was previously approved should be continued in effect for the entire base period.

Among the petitions requesting additional volumes of motor gasoline, the Office of Hearings and Appeals has identified several classes of cases involving similar fact patterns which require similar modes of analysis. *See Class Exception Proceeding Adjusting April 1979 Base Period Volumes of Motor Gasoline For Retail Sales Outlets and Wholesale Purchasers-Consumers,* 3 DOE Par.—(June 22, 1979). In examining the applications for extensions which are currently pending, we have determined that good grounds exist for granting an extension to one such class of applicants. The class which is the focus of this Decision has been designated as the *Anger* class, on the basis of the Decision issued in *Leo Anger Inc.,* 3 DOE Par.—(June 18, 1979).

In *Leo Anger Inc.,* we stated that an exception would be granted where a showing is made that:

(i) a substantial capital investment was made by a firm with the expectation that the investment would enable the applicant to increase its sales of motor gasoline and therefore realize an economic benefit from the investment;

(ii) the increased sales volume and the intended benefits of that capital investment could not be realized until after the [new] base period; and

(iii) in the absence of an exception increasing its allocation of gasoline, the firm will not be able to realize the intended benefits of the capital investment and will be adversely affected to a significant degree.

Leo Anger, supra. Generally, applicants that received relief in *Anger* cases were permitted to use a base period that reflected their actual gasoline purchases during an appropriate period of time following completion of the investment project. However, the specific nature of the relief granted has, on occasion, varied in response to the facts presented in each case. For example, in several instances a period of time of sufficient length to establish a normal level of operations after completion of the capital investment did not exist. In a number of these cases, the DOE ordered that the applicant be supplied with the volumes of motor gasoline on which the investment was based. *See, e.g., Lloyd R. Crais Oil Company,* 3 DOE Par.—(June 19, 1979); *Cal Bliss Enterprises,* 3 DOE Par.—(June 19, 1979); and *Sea Shell Car Wash,* 3 DOE Par.—(August 20, 1979). In other cases of this nature, the DOE concluded that the level of relief should be based on the quantity of gasoline purchased by similar outlets in the same marketing area. *See Canal and Claiborne Rentals,* 3 DOE Par.—(June 19, 1979). In another group of related cases the Office of Hearings and Appeals found that it did not have sufficient information on which to make a reasoned determination as to a proper allocation level that should be assigned and directed the appropriate Regional Office of Petroleum Operations (OPO) to make that determination based on a market survey. In these instances OHA also provided for interim relief pending final action by the Office of Petroleum Operations. In some cases OHA designated an allocation it determined to be reasonable pending action by the Regional ERA Office. *See, e.g., Auto-Brite Car Wash,* Case No. DEE-4641 (Proposed Decision and Order issued July 13, 1979) and *Castro Valley Enterprises* 3 DOE Par.—(August 20, 1979). In another group of cases the Office of Hearings and Appeals concluded that the amount of gasoline to be supplied to the applicant should be based upon an agreement between the applicant and its supplier or a determination by the supplier as to the volume of gasoline generally supplied to similar outlets. That agreement was to govern the firm's allocation until the matter could be reviewed by the appropriate ERA Office of Petroleum Operations. *See, e.g., L.J. Bonnafons,* 3 DOE Par.—(July 24, 1979); *Acree Oil Company,* 3 DOE Par.—(July 18, 1979); and *Tom's Village ARCO,* 3 DOE Par.—(August 20, 1979).

Existence of an Anger Class

The applicants listed in Appendix A of this Decision have all been found in prior decisions of the DOE to have qualified for relief under the *Anger* criteria, and have subsequently applied for an extension of that relief. Different procedural mechanisms for granting relief have been used in certain of these cases. In some cases the DOE has issued a Proposed Decision and Order accompanied by an Interim Order. The Interim Order immediately implemented the provisions of The Proposed Decision. 10 CFR 205.69(A)(a). In those cases in which objections have not been raised to the Proposed Decision a final order granting exception relief has already been issued or will be forthcoming promptly. In addition, 48 firms received exception relief in the class exception decision issued on June 28, 1979. *See Class Extension, supra.* Moreover, there are other cases which have been decided by Regional Offices of the Office of Hearings and Appeals pursuant to the *Anger* principles which are also affected by this Decision.[1]

In view of the fact that there are a very large number of pending applications for exception involving motor gasoline allocation and the fact that expeditious processing of each of these cases for an extension of relief is difficult on an individual basis, we will consider whether a class proceeding should be initiated to consider the extension of exception relief in *Anger* cases.

In previous decisions, we have referred to Rule No. 23 of the Federal Rules of Civil Procedure for guidance as to the prerequisites which might be used in administrative class action proceedings. *See Class Extension, supra; Class Exception Proceeding Adjusting April 1979 Base Period Volumes of Motor Gasoline for Retail Sales Outlets and Wholesale Purchaser-Consumers, supra; American Petroleum Refiners Association, Inc.,* Case No. FEE-4443 (Proposed Decision and Order issued April 9, 1979); and *Retroactive Application of the Separate Inventories Amendment,* 4 FEA Par. 83,099 (1976). Under Rule No. 23(a), a class action may be maintained:

Only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

If is difficult, at this time, to determine the precise number of members of the class since many requests for extension of previously granted relief have not been received from eligible firms. At the present time, we can identify 34 members of the class. In applying the criteria which we have adopted for purposes of determining the existence of a class, we must take into account the very large docket of pending cases at the Office of Hearings and Appeals. While the influx of new applications being filed for relief from the amended allocation regulations has slowed considerably in recent weeks, a substantial inventory of allocation cases still exists at both the National Office and Regional Centers of the Office of Hearings and Appeals. Delay in resolving requests for extension of exception relief could lead to serious and often irreparable injury to both the members of the class and to applicants in other pending cases. In light of these factors, we have determined that the *Anger* class is so numerous that the joinder of all members is impracticable.

In a prior Decision, we found that there existed questions of law common to all members of the *Anger* class and that members of the *Anger* class were fairly and adequately represented in a class proceeding. *See Class Extension, supra.* Therefore, the second and fourth standards for determining the existence of a class have also been met. With regard to the third criterion, in the Class Extension we noted that the only claims or defenses relevant to this proceeding are:

(1) Claims or defenses already presented, or (2) claims or defenses resulting from changed circumstances affecting the additional period with respect to which relief is being considered but not affecting the prior period in which it was granted. To the extent that there may be changed circumstances, we have adopted means to discover these changes and to terminate relief. These means are discussed later in this Decision. Since we adopted these means we have determined that the members of each of the proposed

classes have common claims which are typical of their class.

In this Decision we will again adopt means to determine if the circumstances underlying the granting of exception relief have changed since the time that relief was granted. Accordingly, we conclude that each member of the class has claims typical of the other members.

For the reasons presented, we find that the criteria for forming a class have been met with respect to the *Anger* class.

Determination Concerning the Granting of Relief

The criteria used in granting relief in *Anger* cases are discussed above. In previous decisions, the DOE has determined that each member of the *Anger* class has, prior to March 1979, made a substantial investment, generally in excess of $10,000, and that the firm has been unable to realize the intended benefits of that investment because the motor gasoline allocation regulations utilize a base period during which the firm's sales did not reflect the effect of its investment. It was found in these cases that exception relief was warranted to permit each firm to earn an adequate return on its investment.

We do, however, note that the regulatory environment has changed somewhat since relief was originally granted to members of this class. On July 15, 1979, the DOE adopted an amendment to Section 212.93 of Mandatory Petroleum Price Regulations which permits a retailer to charge 15.4 cents per gallon above its acquisition cost for gasoline. The availability of increased margins for motor gasoline increases the possibility that a firm may realize a substantial positive return on the investment which it made in the absence of exception relief allocating it additional motor gasoline for sale. In these cases, our extension of relief may lead to excessive benefits.

Moreover, since the time the orginial relief was granted, some firms may have taken actions on their own, such as reducing hours or the number of employees, in order to lower operating expenses and increase profits. Nevertheless, in spite of these factors it is our determination that in general the gross inequity which we found to exist in our earlier determinations regarding these firms will continue to exist in the absence of further exception relief. In all of the cases, the firms are prevented by DOE regulations from significantly increasing their volume of sales in the manner intended when they made substantial investments in improving their facilities. We believe that the vast majority of firms in the class will also be adversely affected to a significiant degree unless the exception relief is extended.

We have therefore determined that it is appropriate to extend the relief previously granted to those members of the *Anger* class, as defined in this Decision, to whom final Decisions and Orders are issued or have already been issued.[2] However, in order to identify those firms which could obtain excessive benefits from an extension of relief we will adopt ancillary procedures that will be outlined in more detail later in this Decision.

In several cases involving members of the *Anger* class, final Decisions and Orders have not yet been issued. There are three categories of these cases: those in which no objections have been filed to the Proposed Decisions and Order, those in which the applicant itself objected to the proposed relief, and those in which aggreived parties, other than the applicant, have objected to the proposed relief. With regard to those decisions to which no objections have been raised, final Decisions and Orders are imminent. Relief will be the same as that provided in the Proposed Decision. In those cases, the same public interest considerations that favored the approval of immediate interim relief when the Proposed Decision and Order was issued continue at the present time. In addition, in those instances in which only the applicant has filed objections to the proposed relief we will extend the Proposed Decision and Order and the accompanying Interim Order for the updated base period. To deny those firms an extension of relief which has previously been shown to be justified merely because they are exercising their right to object to the amount of relief would, in our estimation, be inequitable. When final Decisions and Order for the period ending September 30, 1979 are issued in these cases, the level of relief specified in these Decisions shall establish the base period volume to be extended for purposes of this Decision and Order. However, if any aggrieved parties have filed objections to the relief provided a firm under the *Anger* criteria in a Proposed Decision and Order, an extension of that relief will not be provided until the issues raised in the objections have been resolved and a final Decision and Order has been issued.

As mentioned earlier we recognize the possibility that some members of the *Anger* class may no longer qualify for exception relief and may realize excessive benefits from an extension of that relief which they previously received. We have determined that the possibility that this might occur does not affect the decision to establish the *Anger* class or the decision to grant relief, but it does make it appropriate to establish special ancillary procedures. Therefore each member of the *Anger* class that receives additional volumes of motor gasoline as a result of this Decision will be required to file a special statement with the appropriate Office or Regional Center of the Office of Hearings and Appeals by July 31, 1980, in which a detailed accounting of the firm's operations for the period from July 1, 1979 through June 30, 1980 is provided. The accounting shall include a breakdown, on a monthly basis, of the firm's operating exenses. The principal and interest obligations incurred by the firm in undertaking the investment should be noted separately. The statement should also contain monthly revenue information specifying the gross margin and gross profits derived from sales of motor gasoline, gross profits from sales of other petroleum related products and total gross profit from sales of other products on the same property or an adjoining property under common ownership.

Determination Concerning the Issuance of a Final Decision and Order

We have in addition determined that this exception Decision should be issued in final rather than proposed form. Pursuant to the provisions of Section 205.69C(a) of the DOE Procedural Regulations, the Office of Hearings and Appeals may issue a final Decision and Order purusant to 205.69B without first issueing a Proposed Decision and Order after considering the following factors:

(1) The thoroughness with which issues have already been argued in the proceeding;

(2) The nature of the evidence that has already been presented in the proceeding and the likelihood that additional useful evidence would be submitted subsequent to the issuance of a Proposed Decision and Order;

(3) The need for an expeditious determation of the issued presented;

(4) The financial resouces with which existing parties can participate effectively in continued proceedings;

(5) Whether an exception was previously granted or denied to the applicant for the same reason advanced in the present proceeding; and

(6) The public interest.

It is our judgment that a consideration of these factors leads to the conclusion that a final Decision and Order should be issued. This determination is consistent with our announced intention, in the preamble to a recent amendment of the procedural regulations, to use Section 205.69C(a) with respect to applications for extension of exception releif. 44 FR 16854 (March 20, 1979), *C.C.H. Federal Energy Guidelines* Par 40,418 at p. 40, 979-96.

As of September 30, 1979, the National Office of Hearings and Appeals has issued a very large number of Decisions and Orders, and Interim Orders involving the *Anger* criteria to which no objections have been filed by aggrieved parties. The issues related to those proceedings and to similar proceedings resolved by Regional Centers of the Office of Hearings and Appeals have been thoroughly argued by the parties and analyzed by the DOE. Secondly, since the exception relief provided in this Decision merely extends the relief granted in the prior Decisions, its seems very unlikely that any new evidence would be provided subsequent to the issuance of this Order in proposed form. The need for an expeditious determination of the issues presented in this proceeding is evident from the fact that the relief previously granted to these firms expired on September 30, 1979. Futhermore, the issuance of this Decision in final form is clearly in the public interest. A final Decision will allow the affected firms to determine their allocations of motor gasoline for ensuing months and to plan accordingly. This action will also permit more efficient utilization of the limited resources of the Office of Hearings and Appeals in deciding the large number of pending proceedings. Finally, potentially aggreived parties have already been provided an opportunity to object to the relief previously granted in the prior exception proceedings. In the vast majority of cases involving members of the class, no objections have been filed. In the remainder of the cases, objections which have been filed by agrieved parties have already been considered and a final Decision and Order has been issued with respect to the prior

period. It therefore seems very unlikely that other persons will be adversely affected by the issuance of this Decision in final form.

On the basis of these considerations, we have concluded that those firms which received or which will receive exception relief, effective through September 30, 1979, and which are listed in Appendix A, should be granted an extension of this relief for the new base period. In addition, firms identified by the Regional Centers of the office of Hearings and Appeals as belonging to the *Anger* Class, as defined in this Decision, shall also be granted an extension of this relief through the new base period. From time to time the Regional Centers will prepare and issue lists of firms which qualify for this extension.

It is therefore ordered that: (1) The exception relief specified in Paragraph (4) of this Order shall be applicable to all members of the *Anger* class. Each firm identified in Appendix A of this Decision has been determined to be a member of the *Anger* class.

(2) The National Office and Regional Centers of the Office of Hearings and Appeals (OHA) may from time to time issue supplemental determinations specifying additional firms that have the following characteristics and are therefore members of the *Anger* class.

(a) The firm's base period use of motor gasoline for any part of the period beginning on June 1, 1979 and ending September 30, 1979 was adjusted by the DOE's Office of Hearings and Appeals on the basis of the principles set forth in *Leo Anger, Inc.*, 3 DOE Par. ——— (June 18, 1979), pursuant to either:

(i) a final Decision and Order issued by the Office of Hearings and Appeals subsequent to the date of issuance of this Order; or

(ii) a Proposed Decision and Order and an Interim Order issued prior to the date of this Order and effective for the period ending September 30, 1979, excluding these firms identified in paragraph (3) below; and

(b) The firm has requested an extension of the relief previously granted.

(3) Notwithstanding any prior provision of this Order, a firm shall be excluded from the *Anger* class if:

(a) a Proposed Decision and Order has been issued in the proceeding in which the firm involved sought an exception for any part of the June 1, 1979 to September 30, 1979 period;

(b) a Notice of Objection has been filed in that proceeding by an aggrieved party other than the applicant; and

(c) a final Decision and Order has not yet been issued in that proceeding.

(4) The base period use of motor gasoline for each member of the *Anger* class for the November 1977 through October 1978 base period shall be the average monthly base period use established in the Proposed Decision and Order issued to the firm for the June through September 1979 period, or the volume assigned to the firm in the previous class extension. *See Class Exception Proceeding Concerning Extension of Relief Previously Granted in Certain Motor Gasoline Allocation Cases*, 3 DOE Par. ——— (June 18, 1979). In the event a final Decision and Order has been issued which specifies an amount different from that approved in the Proposed Decision, the final Decision shall establish the base period use for purposes of this paragraph. If the relief established in either the proposed or final Decision and Order directed the Regional Office of Petroleum Operations of the Economic Regulatory Administration (OPO) to issue an Assignment Order to a member of the *Anger* class for the period ending September 30, 1979 and the Regional Office has not yet issued the Order, then the relief established in the OHA Decision and Order or Interim Order is hereby extended until the Region does make such an assignment. When a Regional OPO does issue an Assignment Order in these cases it shall make that assignment effective for the entire base period. If the Regional OPO has already issued an Assignment Order pursuant to an OHA Decision and Order issued to a member of the *Anger* class, then that assignment shall be extended for the entire base period.

(5) Each member of the *Anger* class shall file with the appropriate Office or Regional Center of the Office of Hearings and Appeals a special statement by July 31, 1980 which meets the following criteria:

(a) The special statement shall be clearly labelled with the name and number assigned to the Application for Exception, both on the statement itself and on the outside of the envelope in which it is mailed.

(b) The statement shall contain a detailed analysis of the firm's financial operation during the period July 1, 1979 through June 30, 1980. The statement shall disclose, on a monthly basis, all operating expenses including (but not limited to) total salaries for all personnel, total owners' salaries, and monthly principal and interest obligations resulting from the investment which is the basis for relief in this Decision. The statement shall also disclose, on a monthly basis, the revenues realized by the firm including (but not limited to) total gross margin and total gross profit from sales of motor gasoline, total gross profits from sales of other petroleum products, and total gross profits from sales of other products on the same property or an adjoining property under common ownership.

(c) The statement shall be signed, if practicable, by the principal owner of the firm. If the principal owner is not available, it may be signed by the owners of at least a twenty-five percent interest in the business. If the owners of at least twenty-five percent interest in the business also are not available, then it may be signed by the authorized representative of the principal owner or of the owners of at least a twenty-five percent interest in the business.

(6) Relief granted in this Order is subject to modification or revocation upon consideration of the facts submitted in the special statement referred to in paragraph (5) above.

(7) Relief granted in this Order is subject to modification or revocation upon consideration of an Application for Modification which may be filed under subpart J of the DOE Procedural Regulations.

(8) To the extent that the full amount of exception relief has not been granted as requested, an Appeal from those portions of this Decision which deny in part the relief requested may be filed by any person who is aggrieved or adversely affected by the denial of exception relief. Such Appeal shall be filed with the Federal Energy Regulatory Commission pursuant to 18 CFR 1.40. 43 Fed. Reg. 35907 (1978).

(9) All other portions of this Decision constitute final Orders of the Department of Energy of which any aggrieved party may seek judicial review.

Dated: October 28, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Footnotes

[1] Only those firms that have applied for an extension of relief previously granted to them shall be members of the *Anger* class.

[2] Any firm involved in this proceeding may, of course, elect to receive the allocation to which it would be entitled in the absence of exception relief if it is greater than the assigned volumes.

Appendix A.—Member of the Anger Class Identified by the National Office of Hearings and Appeals

Name of Firm, and Case Number

Acree Oil Company—DXE-7805
Alamo Expressway Service Station—DXE-8234
Bearsch's Penn-Jersey Auto Store & Car Care Center—BXE-0067
Bill's Amoco—DXE-8106
Black's Shell Service—BXE-0128
Bud Wolfe's ARCO Mini Market—DXE-8317
C. M. Speigel Oil Company—DXE-7896
Calotex Delaware, Inc.—DXE-7943
Chapman, Kenneth—DXE-8276
Dupont ARCO—DXE-7220
Ellett, Charles—BXE-0065
Franklin Oil Company—DXE-5839
Glenn Oil Company—DXE-8320
H & H Manhattan Shell, Inc.—BXE-0141
Handeyside Oil Corporation—BXE-0052
Hampton Park Exxon—DXE-7774
Holiday Foods, Inc.—DXE-8273
Hondo Oil Company—DXE-8227
Hooten's Exxon—BXE-0106
Johnson's ARCO Mini Market—DXE-8308
Kenilworth Car Wash—BXE-0011
Kenny's Food Markets—BXE-0092
Marblehead Services, Inc.—BXE-0058
Marina South Carwash—DXE-8075
Mr. K. Exxon Self Service—DXE-8117
Peck's ARCO Mini Market—BXE-0142
Peter H. Clark, Inc.—DXE-7920
Rapid Service Oil Co., Inc.—DXE-8076
S & S Petroleum Sales, Inc.—DXE-7876
Sea Shell Car Wash—DXE-8072
Sissie Car Wash, Inc.—BXE-0127
Summit Car Care Center—BXE-0070
Sumter Oil & Gas Co., Inc.—BXE-0076
Webco Southern Oil, Inc.—DXE-8105

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Issuance of Decisions and Orders; Week of June 11 Through June 15, 1979

Notice is hereby given that during the week of June 11 through June 15, 1979, the Decisions and Orders summarized below were issued with respect to

Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

Appeal

Natural Resources Defense Council, Inc.; Washington, DC.; Freedom of Information Act; DFA-0406.

Natural Resources Defense Council, Inc. (NRDC) appealed a partial denial by the DOE Office of Energy Research of a request for documents filed by NRDC under the Freedom of Information Act. The DOE found that a portion of the single document withheld by Energy Research under the exemption for intra-agency memoranda, 5 U.S.C. 552(b)(5) (Exemption 5), consisted of purely factual material and ordered that portion released. However, the DOE found that the remainder of the document consisted of expressions of opinion by agency personnel as to the state of uncertain facts, and it held that this material was exempt from mandatory public disclosure under Exemption 5. The NRDC appeal was therefore granted in part.

Arcon, Inc.; Abilene, Texas; DRO-0155; No. 2 Oil.

E-Z Serve, Inc.; Abilene, Texas; DRO-0170; No. 2 Oil.

Lajet, Inc.; Abilene, Texas; DRO-0156; No. 2 Oil.

Tauber Oil Company; Houston, Texas; DRO-0154; No. 2 Oil.

Thomas P. Reidy, Inc.; Houston, Texas; DRO-0168; No. 2 Oil.

The five firms listed above filed Statements of Objections to Proposed Ancillary Orders that the Region VI Office of Enforcement of the Economic Regulatory Administration issued to them in connection with a Consent Order between the DOE and LaGloria Oil and Gas Company. In considering the Proposed Ancillary Orders, the DOE held that Subpart O of the procedural regulations did not contemplate the issuance of proposed ancillary orders. These cases were therefore remanded to the Southwest District of the ERA.

North American Production Company; Houston, Texas; DRO-0097; Crude Oil.

North American Production Company objected to a Proposed Remedial Order that the DOE Region VI Office of Enforcement issued to the firm on August 4, 1979. In the Proposed Remedial Order, the Regional Office found that during the period September 1, 1973 through September 1, 1976, North American erroneously classified as separate properties two wells located on a single lease and therefore overcharged the purchasers of the crude oil produced from the lease. The DOE held that a contract that conveys drilling rights on a portion of a property subject to an existing right to produce does not create a new property. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final Order.

Rhodes Drilling Company; Abilene, Texas; DRO-0181; Crude Oil.

Rhodes Drilling Company objected to a Proposed Remedial Order that the DOE Office of Enforcement, Region VI, issued to the firm on January 22, 1979. In the Proposed Remedial Order, the Regional Office found that during the period from October 1, 1974 through August 31, 1976, Rhodes had sold crude oil produced from its Sam Swann Lease at prices that exceeded the applicable ceiling prices. The violation alleged in the Proposed Remedial Order arose as a result of the firm's decision to treat a recompleted well on that Lease as a new property. In considering the firm's objections, the DOE held that the recompletion of the well on the Lease did not create a new property because it did not create a new right to produce crude oil. It also rejected the firm's contention that the fact that the new well was drilled into a separate reservoir from that previously drilled by the firm created a new property, because the regulations applicable during the audit period did not permit the treatment of separate reservoirs as separate properties. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final Order. The important issues discussed in the Decision and Order include (i) the validity of FEA Ruling 1975-15; and (ii) the applicability of state law in interpreting DOE regulations.

Requests for Exception

Bright and Company; Dallas, Texas; DEE-2157; Crude Oil.

Bright and Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell a portion of the crude oil produced from the Nolte Lease, located in Gonzales County, Texas, at prevailing market prices. In considering the exception request, the DOE observed that the cost and revenue data submitted by Bright indicated that the firm would be able to operate the Nolte Lease at a profit both currently and in the foreseeable future. The DOE therefore concluded that Bright had not shown exception relief was necessary to provide it with an economic incentive to maintain production operations at the Nolte Lease. The Application for Exception was therefore denied.

ECO Petroleum, Inc.; Los Angeles California; DEE-0967; Crude Oil.

Eco Petroleum, Inc, filed an Application for Exception from the provisions of 10 CFR 211.67 seeking relief from the requirement that it purchase entitlements. In considering the request, the DOE found that Eco was a net seller of entitlements rather than a pruchaser and that under these curcumstances the application to Eco of the Mandatory Petroleum Allocation Regulations produced neither a serious hardship nor a gross inequity. Accordingly, exception relief was denied.

El Paso Natural Gas Company; El Paso, Texas; DEE-1362; Natural Gas Liquids.

El Paso Natural Gas Company filed an Application for Exception from the provisions of 10 CFR 212.165(c)(4) and 10 CFR 212.168(b). The exception, if granted, would permit the firm to allocate directly to the NGL products it sells to the Enterprise Products Company the additional transportation costs that would be incurred if El Paso redirected certain volumes of unfractionated NGLs. Enterprise normally takes delivery of the El Paso NGL products at El Paso's Wingate natural gas processing plant in New Mexico and then transports them by railroad tank car and by tank truck to markets in the South and the Midwest. However, El Paso and Enterprise had proposed a new arrangement under which NGLs owned by El Paso would be diverted from New Mexico through common carrier pipelines to a processing plant Enterprise would build near Mt. Belvieu, Texas. The NGLs would then be fractionated by El Paso in the Mt. Belvieu plant, and Enterprise would take title to the resulting NGL products. El Paso's exception request would enable the firms to undertake the new arrangement without adversely affecting the prices that El Paso charges its other NGL customers. In considering the exception request, the DOE found that exception relief should be granted in order to prevent shortages of NGL products that might arise as the result of the inadequate supply of railroad tank cars at El Paso's Wingate plant. In addition, the DOE found that the approval of exception relief would further public safety, because the transportation of NGLs, which are extremely volatile, is much safer by pipeline than by railroad tank car or by truck.

R. H. Engelki; San Antonio, Texas; DXE-2178; Crude Oil.

R. H. Engelke filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception, if granted, would result in an extension of exception relief previously granted and would permit the firm to continue to sell a certain portion of the crude oil it produces from the Bertha Copsey Lease at upper tier ceiling prices. *R. H. Engelke*, 2 DOE Par. 81,115 (1978). In considering the exception application, the DOE found that R. H. Engelke continued to incur increased operating expenses at the Bertha Copsey Lease and that, in the absence of exception relief, the working interest owners would lack an economic incentive to continue the production of crude oil at that lease. In view of this determination and on the bases of the operating data that R. H. Engelke had submitted for the most recently completed fiscal period, the DOE concluded that exception relief should be continued to permit R. H. Engelke to sell at upper tier ceiling prices 56.53 percent of the crude oil produced from the Bertha Copsey Lease for the benefit of the working interest owners for a six-month period.

Kenneth Luff, Inc.; Denver, Colorado; DXE-6214; Crude Oil.

On April 16, 1979, Kenneth Luff, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell crude oil produced from the Green River Participating Area B of the Walker Hollow Unit located in Uintah County, Utah at upper tier ceiling prices. In considering the firm's application, the DOE found that Luff's operating costs at the Walker Hollow Unit had increased to the point that the firm no longer had an economic incentive to continue production from the lease unless price relief was granted. The DOE also found that if Luff

abandoned its operations at the Walker Hollow Unit a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous decisions, the DOE determined that Luff should be permitted to sell 23.79 percent of the crude produced from the Walker Hollow Unit at upper tier ceiling prices for the benefit of the working interest owners during the period June 1 through November 30, 1979.

Texas Oil & Gas Corp., Corpus Christi, Tex., DXE-5528, crude oil

Texas Oil & Gas Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception, if granted, would result in an extension of exception relief previously granted and would permit the firm to continue to sell the crude oil it produces from the Pete Rydolph "A" Lease at prices in excess of the applicable ceiling prices. *Texas Oil & Gas Corp.*, 3 DOE Par. —— (February 28, 1979). In considering the exception application, the DOE found that TXO was continuing to incur increased operating expenses at the Pete Rydolph "A" Lease and that in the absence of exception relief the firm would lack an economic incentive to continue its crude oil production operations at the property. In view of this determination and on the basis of the operating data TXO had submitted for the most recently completed six-month period, the DOE concluded that exception relief should be continued to permit TXO to sell 73.58 percent of the crude oil produced from the property for the benefit of the working interest owners at market prices not to exceed $17.98 per barrel. TXO was permitted to sell the remainder of the crude oil produced for the benefit of the working interest owners at upper tier ceiling prices. The DOE specified that the exception relief would be effective for a six-month period of time.

Requests for Stay

Cities Service Co., Tulsa, Okla., DST-0400, DST-0443, DST-0444, DES-0440, DES-0443, DES-0444, motor gasoline

Cities Service Company requested a temporary stay and stay of three Orders for the Redirection of Product that the ERA issued to the firm pursuant to 10 CFR 211.107(c). In rejecting these temporary stay requests, the DOE concluded that Cities Service had failed to demonstrate that its compliance with the Redirection Orders would reduce by any measurable amount the supplies of motor gasoline available to its customers or, in the alternative, that the firm would experience any financial hardship if it were to purchase additional quantities of motor gasoline at the price levels currently prevailing for surplus product. However, the DOE concluded that because the firm had shown a very strong likelihood that it would succeed on the merits of its Appeals of the Redirection Orders, a stay was appropriate. In this regard, the DOE pointed out that the three Orders failed to contain findings with respect to the availability of adequate supplies of motor gasoline within the market areas of the three firms. Accordingly, the Cities Service Application for Temporary Stay was denied and its Application for Stay was granted.

Oklahoma Refining Co., Cyril, Okla., DRS-0205, motor gasoline

Oklahoma Refining Company filed an Application for Stay of an Interim Remedial Order for Immediate Compliance directing the firm to resume supplying motor gasoline to Mid-South Oil Company. At a hearing held to consider the request, ORC, Mid-South and the DOE Office of Enforcement agreed to the issuance of a stay under which ORC would resume supplying Mid-South if Mid-South met certain payment terms. In view of the agreement of the parties, the DOE granted the stay requested.

Publicker Industries Inc., Greenwich, Conn., DES-0201, residual fuel oil

Publicker Industries Inc. filed an Application for Stay of its obligation to purchase entitlements in the amount specified in the Entitlement Notice for February 1979 pending a final determination on an appeal the firm intended to file of that Notice. Publicker stated it would argue in its appeal that the method used by DOE to correct an entitlements reporting error previously made by the firm was arbitrary and capricious, and the firm maintained that there was a substantial likelihood that it would succeed on the merits. However, the DOE found that the record did not indicate any error had been made by the DOE Office of Fuels Regulation in adjusting Publicker's entitlement obligation to correct for the firm's reporting error. The DOE found that the method used appeared to be consistent with the method employed by the Office of Fuels Regulation in prior cases, and it noted that Publicker had not identified any regulatory provision that require an adjustment mechanism other than that applied by the DOE. The DOE therefore denied the Publicker Application for Stay.

Petitions Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firms filed Applications for Stay, Temporary Stay, and/or Interim Order with respect to the provisions of Standby Regulation Activation Order No. 1. The requests, if granted, would result in an increase in base period allocations of motor gasoline pending determination of Applications for Exception. In the following Decisions and Orders the DOE determined that the requests be granted:

Company name, Case No., Location

John and Sharon Volk's Arco, DEN-3760, Santa Ynez, CA
Ray W. Reeves, DEN-3550, McDonough, GA
J&B Automotive, DEN-3783, Patchogue, NY
Auto Row Texaco, DEN-4290, San Jose, CA
Publix Oil Co., DEN-5462, Washington, DC
Bassett's 66 Service, DEN-4510, Bartonville, IL
Peck's Arco Mini Mart, DEN-5911, Livermore, CA
Shoal's Creek Chevron, DEE-2476, Florence, AL

Petition Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firm filed an Application for Temporary Stay of the provisions of Standby Regulation Activation Order No. 1. The stay request, if granted, would result in an increase in the applicant's base period allocation of motor gasoline pending determination of an Application for Exception. The DOE issued a Decision and Order in which it determined that the stay request should be denied:

Company name, Case No., Location

Highway Pet. Sales, DST-5815, Washington, DC

Petition Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firm filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. After reviewing the material presented by the firm, the DOE issued a Decision and Order in which it determined that the petition should be dismissed without prejudice to a refiling at a later date:

Company name, Case no., Location

Frank Chance, DEE-4590, Watsonville, CA

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

Allinder Services, Inc.—DXE-6066.
Berg's Shell Service—DEE-5968.
Blue Valley Skelly—DEE-5136.
Dubb's Cash Market—DEE-5639.
Larry's Clovis Exxon—DEE-4139.
Mrs. Michael Wiwczar—DEE-6131.
A&M Mobil—DEE-4026.
Board of Supervisors of San Bernardino—DEE-5557.
St. Louis Plaza—DEE-4984.
Conlee Oil Co.—DEE-2955.
Fran's Gas—DEE-5251.
Oroville Area Chamber of Commerce—DEE-5558.
Bob Cerwin Co., Inc.—DEE-5876.
Deguelle Oil Company—DEE-4049, DST-4049.
Discount Gas—DEE-3995.
Ashland Oil, Inc.—DEA-0393.
C & D Corp., Inc.—DEE-6235.
Craft Pet. Co., Inc.—DXE-5527.
Ellingsen-MacClean Oil Co., Inc.—DEE-5404.
Exxon Co., USA—DEA-0422, DES-0422, DST-0422.
Frito Lay, Inc.—DEE-4604.
Interstate Fina Service Station—DEE-4494, DST-4494.
Jasper & Jasper Coal Co.—DEE-5494.
Jiffy Food Stores—DEE-5499.
Lakeview Marina, Inc.—DEE-6180.
Livingston-Thebaut Oil Co.—DEE-3376.
M. V. Jones—DEE-6055, DES-6055, DST-6055.
Mid-Atlantic Pet. Corporation—DST-0050.
Marilyn Garrett—DEE-5170.
San Francisco Produce Terminal—DEE-5552.
Stanley Clark—DEE-5986.
Albert Pilkington—DEE-4166.
Art's Amoco—DEE-5763.
City Service Fuels—DEE-4681.
Harry Franco Gulf—DEE-4692.
J&J Texaco—DEE-5029.
Ken's Service Center—DEE-4706.
Peter Carbone & Sons—DEE-2981.
Spikes Service Station—DEE-5653.

Thorsgard's Big Sioux—DEE–3179, DES–3179.
Auto Roe Texaco—DES–4290.
Gilliland Oil & Land Co.—DRO–0157.
Peerless Petro-Chemicals, Inc.—DPI–0016.
Jimmy's Chevron Station—DEE–4436.
Wallen Bros. & Habelt, Inc.—DEE–6277.
Blackwell Oil Co.—DEE–2739, DES–2739 DST–2739.
Boehm Exxon Service Station—DEE–4832.
Dan's Mobil—DEE–3184, DST–3184.
Larry's Mobil—DEE–5692.
P&J Service—DEE–5657.
Peter A. Parrotts Auto Service Center—DEE–5649.
Bob Brown's Oil Co.—DEE–2889, DES–2889, DST–2889.
Bryant & Blount Oil Company—DEE–2405.
Fuel Oil Service Co., Inc.—DES–0184.
Gulf Oil Co.-US—DEA–0441.
Knox Crow Mobil—DEE–4358.
Ovid Oil Company—DEE–3006.

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

November 21, 1979.

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BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of July 16 Through July 20, 1979

Notice is hereby given that during the week of July 16 through July 20, 1979, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

Appeals

Collins Oil Co, Aurora, Ill., DRA–0015, No. 2, Heating Oil.

Collins Oil Company appealed from a Remedial Order which the Director of Compliance of the Federal Energy Administration Region V issued to it on September 28, 1977. In the Remedial Order, the FEA found that Collins had violated the provisions of 6 CFR 150.359 and 10 CFR 212.93 by selling No. 2 heating oil to its customers at prices in excess of the prices which were permissible under the applicable regulations. The Remedial Order therefore directed Collins to reduce its selling price for No 2 heating oil by 1.5 cents per gallons to each of its three classes of purchaser until the total amount of the overcharges, plus applicable interest, has been refunded. In considering Collins' Appeal from the Remedial Order, the DOE rejected the firm's contentions that the DOE does not have the authority to issue and enforce Remedial Orders and that Collins had been denied due process of law. The firm also contended that the refund provisions of the Remedial Order would result in a serious financial hardship to the firm. The DOE found however that the financial information submitted by Collins was not supportive of this claim. Nevertheless the DOE did find merit in Collins' assertion that the FEA had erred in its treatment of the firm's unrecovered or "banked" product costs as well as in its calculation of Collins' sales volumes of No. 2 heating oil to certain purchasers. Accordingly, the DOE remanded the Remedial Order to the Central Enforcement District for appropriate modifications.

Lunday-Thagard Oil Co., Washington, D.C., DFA–0458, motor gasoline.

Lunday-Thagard Oil Company filed an Appeal from a determination issued to the firm by a Deputy Director of the Office of Hearings and Appeals (OHA) of the DOE in response to a Request for Information which the firm had submitted under the Freedom of Information Act. In it Request, Lunday-Thagard had sought copies of certain records relating to modifications in the standards for exception relief from entitlement purchase obligations for certain small refiners. The Deputy Director identified ten documents as responsive to the request; he released nine of the documents in their entirety, but deleted large portions of the tenth, a worksheet containing data on 16 small refiners, prior to releasing it. In its Appeal, Lunday-Thagard requested that the DOE order a wider dissemination of its request within the agency, undertake a new search for documents responsive to the portions of the request at issue, and order the release of the data which was deleted by the Deputy Director.

In considering the Appeal, the DOE determined that all offices within the agency likely to possess materials responsive to the request had been contacted and that the decision to formally refer the request solely to OHA had been proper. However, the DOE discovered and released to Lunday-Thagard copies of certain additional documents in the possession of OHA. The DOE also released to Lunday-Thagard in a "scrambled" form some of the data which had been deleted from the worksheet released by the Deputy Director in his initial determination, but it upheld the withholding of the remaining data on the worksheet as confidential proprietary information exempt from mandatory disclosure under 5 U.S.C. 552(b)(4). Lunday-Thagard's Appeal was accordingly granted in part and denied in part.

National Distillers & Chemical Corp.; Washington, D.C.; freedom of information, DFA–0467

National Distillers & Chemical Corporation filed an Appeal from a partial denial by the Deputy District Manager of the DOE Central Enforcement District of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that certain of the documents which were initially withheld under exemptions 4, 5 and 7 should be released to the public. An important issue that was considered in the Decision and Order was the extent to which the release of material from an investigatory file would interfere with a pending enforcement action.

Pacific Interstate Transmission Co.; Los Angeles, California; DFA–0442, freedom of information

Pacific Interstate Transmission Company (PITCO) filed an Appeal from a denial by the Director of Freedom of Information and Privacy Act Activities (the Director) of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In its request, PITCO sought copies of DOE EIA–14 forms and predecessor forms (FEA–P110–M–1 and FEO–96) filed during the last 4 years by 6 named California crude oil refiners. The Director withheld the forms in their entirety on the ground that they consisted of confidential commercial information exempt from mandatory disclosure under Exemption 4 of the FOIA.

In its Appeal, PITCO contended that the Director improperly withheld the forms pursuant to Exemption 4. After considering this contention and conducting a *de novo* review of the information contained in these forms, the DOE determined that the Director had correctly concluded that the data contained in the requested forms did fall within the scope of Exemption 4. The DOE further determined that the forms contained no reasonably segregable, non-exempt information which should have been furnished to PITCO. The DOE therefore rejected PITCO's contention. PITCO also argued that even if the information in the forms was privileged under Exemption 4, the 6 refiners had waived that privilege by making a public issue of their costs and other data in these forms in a licensing proceeding before the Federal Energy Regulatory Commission. In this regard, the DOE determined that the FOIA was not intended to provide a forum for the evaluation of the merits of individual claims to proprietary information held by the Government. Finally, PITCO contended that the DOE had waived any right to withhold the requested material because the agency had failed to respond to PITCO's Request for Information within a period of 10 working days. The DOE rejected this argument, noting that neither the FOIA nor the DOE regulations require disclosure of properly withheld information as a remedy for administrative delay. The PITCO Appeal was therefore denied.

Professor Paul Davidson; New Brunswick, New Jersey; DFA–0450, freedom of information

Professor Paul Davidson filed an Appeal from a partial denial by the Director of Freedom of Information and Privacy Acts Activities of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Director had erroneously failed to state in writing the reasons why certain information had been

deleted from one of the documents furnished to Davidson in response to his Request. The document involved was Gulf Oil Corporation's reply to a Notice of Proposed Disallowance. The DOE further determined that certain of the deleted material was in the public domain and should therefore be released to Davidson. The remainder of the deleted information was found to be commercial and financial material properly withheld under Exemption (b)(4) of the FOIA.

True Oil Co., Casper, Wyoming DFA-0438, freedom of information

True Oil Company filed an Appeal from a partial denial by the Office of Enforcement, Rocky Mountain District, of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that certain of the documents which were initially withheld under exemption 5 of the FOIA should be released to the public. An important issue that was considered in the Decision and Order was the applicability of exemption 7 of the FOIA to law enforcement documents where release of the documents would impose a burden on the enforcement office concerned.

Vinson & Elkins, Washington, D.C. DFA-0468, freedom of information

Vinson & Elkins appealed from a partial denial by the Director of Freedom of Information and Privacy Acts Activities of a request for information that it had filed under the Freedom of Information Act. The firm had requested all documents related to the establishment of crude oil transfer prices in interaffiliate transactions under 10 CFR 212.84. The FOIA Director withheld all or a part of 44 documents pursuant to Exemption 5 of the FOIA, 5 USC 552(b)(5), in accordance with a prior decision by this Office concerning the same request. *Vinson & Elkins*, 2 DOE Par. 80,191 (1978). The firm contended on appeal that the FOIA Director failed to describe adequately the nature of the documents withheld and his reasons for withholding them. In rejecting these contentions, the DOE found that the material consisted of predecisional opinions and selections of particular facts set forth in intra-agency memoranda, and therefore concluded that the material was properly withheld under Exemption 5. The DOE did release one memorandum, however, because it determined that its release would not be contrary to the public interest. Vinson & Elkins also named 35 other related documents that, based on published lists in similar FOIA Appeals were apparently in DOE files, but that the FOIA Director had not listed in his Order. Accordingly, the FOIA Director's Order was remanded and he was directed to make a further search for the specified documents.

Vorys, Sater, Seymour and Pease, Washington, D.C. DFA-0448, freedom of information

Vorys, Sater, Seymour and Pease filed an Appeal from a denial by the Disclosure Officer of the Office of Special Counsel for Compliance of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the documents which were initially withheld under Exemptions 4 and 7A should be remanded to the Disclosure Officer for further action. An important issue that was considered in the Decision and Order was the applicability of Exemption 7A in those instances where audit workpapers have been released to the firm being audited.

Requests for Exception

Phillips Petroleum Company, Bartlesville, Oklahoma, DEE-1907, crude oil

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices the crude oil which it produces from the Arnston Lease located in Divide County, North Dakota. In considering the Application, the DOE found that the cost of producing crude oil from the Arnston Lease had increased to a level where it now exceeds the revenues the firm can obtain from the sale of the crude oil at the lower tier ceiling price. The DOE found that Phillips had no economic incentive to continue to produce crude oil from the property, and that it was unlikely that the crude oil in the reservoir underlying the Arnston Lease could be recovered by any other firm in the absence of exception relief. The DOE therefore concluded that the application of the ceiling price rule resulted in a gross inequity to Phillips and the other working interest owners. In order to provide the working interest owners with an incentive to continue to produce, the DOE granted an exception which permits Phillips to sell at upper tier ceiling prices 100 percent of the crude oil produced from the Arnston Lease for the benefit of the working interest owners for the period December 27, 1978 through June 30, 1979.

Texaco, Inc., White Plains, New York, DEE-1673, motor gasoline

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR 212.31, 212.82 and 212.83 in which the firm sought to consolidate a number of its purchasers of motor gasoline into a single class of purchaser for purposes of the DOE price regulations. In considering the request, the DOE found that the firm failed to establish that the DOE regulations pertaining to classes of purchaser were causing the firm to experience a gross inequity as a result of an unrepresentative base period. Accordingly, exception relief was denied. The important issue discussed in the Decision and Order is whether discounts which were in effect to Texaco's customers on May 15, 1973 accurately reflected current market conditions and Texaco's cutomary business practices.

Petition for Special Redress

Young Refining Corp., Douglasville, Georgia, DSG-0055 DES-0215, crude oil

Young Refining Corporation filed an Application for Stay and a Petition for Special Redress from the requirement that two members of the firm appear before the DOE and testify concerning a DOE investigation of whether Young had violated the Mandatory Petroleum Price and Allocation Regulations. The investigation involved certain volumes of crude oil which Young reported to the DOE as refined for its account by other refiners. In considering the Application and Petition, the DOE determined that Young failed to show circumstances "so exceptional that an immediate review is warranted to correct substantial injury of legal rights." Therefore, Young's stay request was denied and its Petition for Special Redress was dismissed.

Request for Modification and/or Rescission

Quincy Oil, Inc., Quincy, Mass., DMR-0055, No. 6 fuel oil

The DOE Office of Enforcement filed a Motion to Vacate a Decision and Order issued to Quincy Oil, Inc. by the FEA Office of Exceptions and Appeals, predecessor of the DOE Office of Hearings and Appeals. *Quincy Oil, Inc.*, 5 FEA Par. 80,589 (1977). In the 1977 Decision and Order, the FEA denied Quincy's Appeal of a Remedial Order. After considering the Motion, the DOE noted that the Office of Enforcement had withdrawn the Remedial Order on May 2, 1979 and that the Appeal determination was therefore moot. The DOE accordingly withdrew the 1977 Decision and Order.

Requests for Stay

Derby Refining Co., Wichita, Kans., DST-0225, DES-0225, DEN-0225, gasohol

Derby Refining Company filed Applications for Temporary Stay, Stay, and Temporary Exception requesting immediate relief from the DOE pricing regulations to facilitate the firm's production and marketing of Gasohol. In considering the Applications, the DOE found that there was a strong likelihood of success on the merits of Derby's underlying Application for Exception and that it was desirable for public policy reasons to grant the firm's request. Accordingly, the Temporary Exception request was granted.

Pester Refining Co., Washington, D.C., DES-0228, DST-0228, motor gasoline

Pester Refining Company filed an Application for Temporary Exception to facilitate its blending of Gasohol. In considering the Application, the DOE noted that the DOE price regulations do not provide for the full recovery of the cost of alcohol to refiners who blend Gasohol and that relief is required to provide Pester with an incentive to market the product. Pester's temporary exception request was therefore granted.

Robert A. Williams, Minneapolis, Minn., DES-0239, motor gasoline

Robert A. Williams filed an Application for Stay from the requirements that it reduce its price for motor gasoline to levels established by a DOE audit of the outlet and post maximum lawful selling prices for gasoline. 10 CFR 210.92 and 10 CFR 212.93. In considering the Application, the DOE determined that Williams had not made a showing that denial of the stay would result in a more immediate serious hardship or gross inequity to it than to other affected persons. The Williams stay request was therefore denied.

Requests for Temporary Stay

Belcher of New England, Inc., Washington, D.C., DRT-0061, motor gasoline

Belcher of New England, Inc. filed an Application for Temporary Stay of the requirement that it supply motor gasoline to Acomi, Inc., in compliance with the provisions of an Interim Remedial Order for Immediate Compliance issued to Belcher by the Office of Enforcement, Northeast District. After considering the arguments presented by Belcher, the DOE determined that a Temporary Stay should be granted pending a determination on Belcher's forthcoming Application for Stay.

Citadel Corp., Washington, D.C., DRT-0258, DRT-0259, DRT-0260, motor gasoline

Citadel Corporation filed an Application for Temporary Stay from the provisions of three Interim Remedial Orders for Immediate Compliance issued to the firm by the Office of Enforcement of the Economic Regulatory Administration. In considering the Application, the DOE determined that there was substantial merit to Citadel's assertion that it could incur an immediate irreparable injury if required to comply immediately with the provisions of the Interim Remedial Orders for Immediate Compliance. Citadel's temporary stay request was therefore granted.

Koch Industries, Inc., Wichita, Kans., DRT-0060, motor gasoline

Koch Industries, Inc., filed an Application for Temporary Stay from the provisions of an Interim Remedial Order for Immediate Compliance which required it to immediately supply the Saturn Petroleum Company with motor gasoline. In considering the Application, the DOE determined that Koch failed to show that it would be irreparably injured in the absence of immediate stay relief. Koch's Temporary Stay request was therefore denied.

Interim Orders

Commonwealth Oil Refining Company, Inc., Penuelas, P.R., DEN-1022, naphtha

Commonwealth Oil Refining Company, Inc. filed a Motion for Interim Relief from the provisions of 10 CFR, Part 211. In the Motion the firm requested that the exception relief tentatively granted to it in a Proposed Decision and Order issued by the DOE on November 7, 1978, be provided on an interim basis pending the issuance of a final Decision and Order on Corco's Application for Exception. In considering the request, the DOE applied the standards set forth in Section 205.69A of the DOE Regulations. The DOE concluded that although the Proposed Decision and Order tentatively granted relief to Corco, the firm had not shown that its operations would be substantially impaired unless the exception relief which had been tentatively granted were immediately implemented. Accordingly, Corco's Motion for Interim Relief was denied.

Port Petroleum, Inc., Washington, D.C., DEN-6994, crude oil

Port Petroleum, Inc., filed an Application for Temporary Exception in which it requested that it be included in the Buy-Sell Program even though it had not begun construction of its refinery or made the necessary commitment toward that end by August 24, 1977. *See* 10 CFR 211.65(a)(i)(iii). In considering the Application, the DOE determined that Port had failed to demonstrate that it was likely to succeed on the merits of its Application for Exception or that it would incur an irreparable injury in the absence of immediate relief. The Port temporary exception request was therefore denied.

Supplemental Order

Donald Johnson, Vernal, Utah, DEX-0042, crude oil

Donald Johnson filed a petition styled as a request for a Supplemental Order which, if granted, would permit Johnson to sell additional quantities of crude oil produced from the Roosevelt Unit located in Uintah County, Utah, at upper tier ceiling prices to supplement the exception relief previously granted to him. *Donald Johnson*, 5 FEA Par. 83,154 (1977). In his application, Johnson stated that the relief provided in the previous Decision is insufficient to alleviate the gross inequity that was found to exist. In considering the request, the DOE determined that while the actual expenditures incurred in implementing the capital investment project on the Roosevelt Unit were considerably greater than those originally projected by Johnson, it also appears that the original estimates of production were significantly understated. As a result of the revised projections of production and operating data, the DOE determined that an adjustment to the amount of exception relief was necessary in order to provide the working interest owners with the rate of return specified in the previous Decision. Exception relief was therefore approved that permits Johnson to sell 9.88 percent of the working interest share of production from the Roosevelt Unit at upper tier ceiling prices over the remaining productive life of the project.

Protective Orders

The following firm filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy:

Company Name, Case No., and Location

Wilmer, Cutler & Pickering, DES-0189, Washington, DC

Petitions Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firms filed Applications for Exception and/or Interim Order involving the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be granted:

Company Name, Case No., and Location

Onyx Corporation, DEN-3280, Creve Coeur, MO
Francis Union 76, DEN-5210, Nashville, TN
Kenilworth Car Wash, DEN-4707, Hyattsville, MD
Ozark Cty. Gas Co., DEN-2513, Branson, MO
Acree Oil Co., Inc., DEE-3525, DeLand, FL
Daigh Automotive Engineering Corp., DEN-6038, Wilmington, CA
Gibson's Exxon, DEE-2966, Petersburg, FL
Hampton Station, DEE-3828, Brothers, OR
Spoon's Gulf Station, DEN-4095, Mena, AR
Fuel Oil Supply & Terminaling, Inc., DEL-6388, Washington, DC
Jesse Morales, DEE-3084, Uvalde, TX
Jones & Brown Enterprises, Inc., DEX-0194, Sallisaw, OK

Petitions Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firms filed Application for Exception and Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. After reviewing the material presented by this firm, the DOE issued a Decision and Order which determined that the petition should be dismissed without prejudice to a refiling at a later date:

Company name, Case No., Location

Pep-O Pet. Co., Inc., DEE-2432, DST-2432, Jacksonville, FL

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

Burghoff's Service Station, DEE-4675
Hatim Addal Mobil, DEE-4916
Neville's Service, DEE-5246
Burk Royalty Co., DEE-7074
Forest Grove Texaco, DEE-4483
G & M Truck Plaza, DEE-3293
I-20 & Industrial Drive Gulf, DEE-3077
N. C. Gunther, DEE-6968
Perris Valley Service, DEE-6565
Petro-Lewis Corp., DEE-7073
Shell Oil Co., DES-0385
Francis Union 76, DES-5210
Carolina Oil Co. of Bishopville, Inc., DEE-3100, DST-3100
Peerless Petrochemicals, Inc., DPI-0016
Powerine Oil Co., DEE-2878
Texaco, Inc., DES-0223
Tri-Con Petroleum, Inc., DEE-4253, DST-4253
Angelo Vitti, DEE-5645
Frank Laskey, DEE-5671
J & B General Store, DEE-3331, DES-3331
Joe's Super Service, DEE-6843
New Gate 66 Service, DEE-4400
Pen Fern Oil Co., DEE-4813
Robert E. Wojcik, DEE-4748
Simons Service Station, DEE-4658, DES-4658
Smith-Snow Amoco, DEE-4872
A-Doc Oil Co., DEE-6028
Andres Guerrero, DEE-4475
Sanford Oil Co., DEE-4858
Tony's Gulf, DEE-5254
United Cooperatives, Inc., DEE-5981
Ware Oil Co., Inc., DEE-6969
Annandale Phillips 66, DEE-4396
Fuel Oil Supply and Terminaling, Inc., DES-6388, DST-6388

G. L. Spencer & Co., DEE–6155
H. Gruskin Enterprises, Inc., DEE–7142
Hilltop Standard, DEE–5802
Jones, Don, DEE–4471
Hollis, James, DEE–4453
Leothen Oil Co., Inc., DEE–3618, DST–3618
Maryland Messenger Service, Inc., DEE–6693
North Stop, Inc., DEE–2830, DST–2830
Sanders Kerr-McGee Station, DEE–4464

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Melvin Goldstein,
Director, Office of Hearings and Appeals.
November 21, 1979.
[FR Doc. 79-36856 Filed 11-29-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1368-3]

American Cyanamid Company; Notice of Approval of PSD Permit

Notice is hereby given that on November 8, 1979, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to American Cyanamid Company for approval to construct a new 350 ton-per-day nitric acid plant at its facility near Hannibal, Missouri. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Eighth Circuit Court of Appeals. A petition for review must be filed on or before January 29, 1980.

Copies of the permit are available for public inspection upon request at the following locations:

Public Notice Board, City Hall, Hannibal, Missouri 63401.
U.S. Environmental Protection Agency, Air and Hazardous Materials Division, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: November 20, 1979.

Kathleen Q. Camin,
Regional Administrator, Region VII.
[FR Doc. 79-36867 Filed 11-29-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1368-4]

City of Ames; Notice of Approval of PSD Permit

Notice is hereby given that on November 5, 1979, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to the City of Ames, Iowa, for approval to construct a new 65 megawatt coal- and refuse-fired electric generating unit at the Ames Municipal Power Plant. This permit has been issued under EPA's Prevention of Significant Air Quality Deteriorations (40 CFR 52.21) applicable to the new facility subject to certain conditions, including that emissions from all other facilities at Ames Municipal Power Plant be reduced to the degree necessary to be in compliance with Iowa Department of Environmental Quality Order, Docket Number 79–A–007, prior to the time the new unit begins operation.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Eighth Circuit Court of Appeals. A petition for review must be filed on or before January 29, 1980.

Copies of the permit are available for public inspection upon request at the following locations:

City Clerk's Office, Administration Building, Main and Pearl Streets, Ames, Iowa 50010.
U.S. Environmental Protection Agency, Air and Hazardous Materials Division, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: November 20, 1979.

Kathleen Q. Camin,
Regional Administrator, Region VII.
[FR Doc. 79-36868 Filed 11-29-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1368-1]

City of Independence, Missouri; Notice of Determination of Nonapplicability of PSD Regulations

Notice is hereby given that on November 1, 1979, the Environmental Protection Agency (EPA) issued a determination that the repair and reactivation of the Missouri City Power Plant by the City of Independence would not be subject to review under EPA's Prevention of Significant Air Quality Deterioration (PSD) regulations. The PSD regulations require approval by EPA before major new air pollution sources may be constructed or operated.

The Missouri City Power Plant, located in Missouri City, Missouri, is owned by N. W. Electric Power Cooperative, Incorporated, of Cameron, Missouri. The plant has been inactive since September of 1975, when part of the electrical switching equipment was damaged by fire. The generating equipment has been maintained in working condition, N. W. Electric Cooperative, Incorporated, started negotiating with the City of Independence to sell the plant in 1976, and the plant has been maintained in the state's emissions inventory. On this basis, EPA has determined that the shutdown of the plant was not intended to be permanent. Thus, the reactivation of the plant will not be considered to be a new air pollution source.

The determination of nonapplicability of the PSD regulations is reviewable under Section 307(b)(1) of the Clean Air Act only in the Eighth Circuit court of Appeals. A petition for review must be filed on or before January 29, 1980.

The determination and background information is available for public inspection at:

U.S. Environmental Protection Agency, Air and Hazardous Materials Division, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: November 20, 1979.

Kathleen Q. Camin,
Regional Administrator, Region VII.
[FR Doc. 79-36869 Filed 11-29-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1368-2]

Pillsbury Company; Notice of Determination of Nonapplicability of PSD Regulations

Notice is hereby given that on November 2, 1979, the Environmental Protection Agency determined that the Pillsbury Company's proposed additional flour-handling facilities at Fox Deluxe Pizza Company, Joplin, Missouri, are not subject to the review requirements under the regulations for the Prevention of Significant Air Quality Deterioration (PSD). New sources, or modifications, which have the potential to emit 250 tons per year of any pollutant are subject to preconstruction review. These proposed facilities have the potential to emit only 20 tons per year.

This applicability determination is reviewable under Section 307(b)(1) of the Clean Air Act only in the Eighth Circuit Court of Appeals. A petition for review must be filed on or before January 29, 1980.

Additional information is available for public inspection at:

U.S. Environmental Protection Agency,
Air and Hazardous Materials Division,
324 East 11th Street,
Kansas City, Missouri 64106.

Dated: November 20, 1979.

Kathleen Q. Camin,

Regional Administrator, Region VII.

[FR Doc. 79-36876 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1368-6]

Science Advisory Board, Research Outlook Review Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Research Outlook Review Subcommittee of the Science Advisory Board will be held on December 18, 1979, beginning at 9:00 a.m. in Conference Room 2123, Waterside Mall, 401 M Street, SW., Washington, D.C.

This is the second meeting of this Research Outlook Review Subcommittee. The Environmental Research, Development and Demonstration Authorization Act of 1978 requires the Science Advisory Board to review and comment on the Agency's five-year plan for environmental research, development, and demonstration. The agenda includes an up-date on the status of the plan and consideration of the revised draft, *Research Outlook 1980.*

The meeting is open to the public. Because of the limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than December 11, 1979, and receive a confirmed reservation from Dr. J. Frances Allen, Staff Officer, Science Advisory Board, or Ms. Anita Najera, 202-472-9444.

Dated: November 26, 1979.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 79-36885 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1368-5]

Water Programs; Determination of Primary Enforcement Responsibility

This public notice is issued under section 1413 of the Safe Drinking Water Act of 1977, Pub. L. 95-190 (amending 42 U.S.C. 300f et seq.), and 40 CFR 142.10, National Interim Primary Drinking Water Regulations, published at 41 FR 2918 (January 20, 1976).

An application, dated August 10, 1979, has been received from Ms. Betty Wilson, Acting Commissioner, State of New Jersey, Department of Environmental Protection requesting that the Department of Environmental Protection be granted primary enforcement responsibility for public water systems in New Jersey, in accordance with the provisions of the Safe Drinking Water Act. Supplementing the application there has also been received (1) an opinion from the New Jersey Attorney General, dated September 27, 1979, clarifying the meaning of section 4(b) of the New Jersey Safe Drinking Water Act, (2) a letter dated November 2, 1979, from the Director, New Jersey Division of Administrative Procedure, authorizing the incorporation by reference of the Federal regulations in the New Jersey regulations, and (3) a letter dated November 8, 1979, from the Director, Division of Water Resources, Department of Environmental Protection, clarifying certain provisions of New Jersey regulations.

In response, I have determined as Acting Regional Administrator of the U.S. Environmental Protection Agency, Region II, the New Jersey's Department of Environmental Protection has met all conditions of the Safe Drinking Water Act and subsequent requlations for the assumption of primary enforcement responsibility for public water systems in New Jersey.

(1) Has adopted drinking water regulations which are no less stringent than the National Interim Primary Drinking Water Regulations;

(2) Has adopted and will implement adequate procedures for the enforcement of such regulations, including:

a. Maintenance of an inventory of public water systems.

b. A systematic program for conducting sanitary surveys of public water systems.

c. Availability of laboratory facilities certified by EPA and capable of performing analytical measurements of all contaminants specified in the regulations.

d. Establishment and maintenance of an activity to assure that the design and construction of new or substantially modified facilities will be capable of compliance with the regulations;

e. Establishment and maintenance of a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants.

(3) Has adopted statutory or regulatory enforcement authority to compel compliance with the regulations;

(4) Will keep such records and make such reports as required;

(5) Will issue variances and exemptions in accordance with the provisions of the National Interim Primary Drinking Water Regulations; and

(6) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

All documents relating to this determination are available for public inspection during normal business hours, Monday through Friday, at the following offices:

Division of Water Resources, Department of Environmental Protection, 1474 Prospect Street, Trenton, New Jersey.

Water Supply Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007.

All interested parties are invited to submit written comments on this determination. Written comments must be received within 30 days of publication of this notice.

Further information may be obtained by writing the Water Supply Branch of the U.S. Environmental Protection Agency, Region II or the Division of Water Resources, Department of Environmental Protection or by calling Harry F. Smith, Jr., at (212) 264-1800 or John Wilford at (609) 292-7219.

A public hearing may be requested by any interested person. Frivolous or insubstantial requests for a public hearing may be denied; however, if a substantial request is received on or before December 31, 1979, a public hearing will be held and notice given in the Federal Register and newspapers of general circulation. Such requests shall be addressed to:

Dr. Richard T. Dewling, Acting Regional Administrator, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007

and shall include the following information:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If no timely request for a hearing is received, my determination shall become effective on or before December 31, 1979.

If there is a substantial request for a hearing this notice shall not become effective until after such hearing, at which time I shall issue an order affirming or rescinding my determination. If the determination is affirmed it shall become effective as of the date of that order.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: November 26, 1979.

Dr. Richard T. Dewling,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region II.

[FR Doc. 79-36866 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1368-7]

Notice of Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements (EISs) which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of November 19 to November 23, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from November 30, 1979 and will end on January 14, 1980. The 30-day review period for final EIS's as calculated from November 30, 1979 will end on December 31, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For hard copy reproduction: Environmental Law Institute, 1346 Connecticut Avenue NW., Washington, DC 20036.

For hard copy reproduction or microfiche: Information Resources Press, 2100 M Street NW., Suite 316, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245-3006.

SUMMARY OF NOTICE:

On July 30, 1979, the CEQ Regulations became effective. Pursuant to § 1506.10(a), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of November 19, 1979 to November 23, 1979 the 30-day review period will be calculated from November 30, 1979. The review period will end on December 31, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of November 19, 1979 to November 23, 1979. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this Notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period of EPA has approved a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the newly established date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: November 27, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

APPENDIX I

EIS's Filed With EPA During The Week of November 19 to 23, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Forest Service

Final

North Idaho Forests Silvicultural Treatments, several counties, Idaho, November 19: Proposed is the reduction of competing vegetation, with herbicides, as a part of the timber resource management activities on national forest lands in northern Idaho. Approximately 60,000 acres have been determined as suitable for silvicultural treatment. The treatments would include: (1) releasing already established conifer seedlings from competing vegetation on 30,271 acres, (2) preparing 28,404 acres for the planting of young conifers, and (3) precommercially thinning approximately 1,250 acres of existing conifer stands. Comments made by: EPA, USDA, DOE, FERC, DOC, state and local agencies. (EIS Order No. 91170.)

Alsea Planning Unit, Siuslaw National Forest, Benton, Lane and Lincoln Counties, Oreg., November 23: Proposed is a land management plan for the Alsea Planning Unit of the Siuslaw National Forest, Benton, Lane, and Lincoln Counties, Oreg. The preferred alternative for the 232,903 acre area commits approximately: 4,800 acres to spotted owl habitat on a 300-year rotation, plus 626 unregulated acres; 1,600 acres for northern bald eagle habitat: 134,300 acres to general forest management; 15,000 acres to deciduous/conifer mixed stands; 14,300 acres to non-forest use; and 78,000 acres to special management. Also, 3,812 acres in the drift creek roadless area would be retained in a roadless area, with the balance being allocated for general management. (FEIS-06-12-79-08) Comments made by: FERC, COE, EPA, DPI, USDA, state and local agencies, groups, individuals and businesses. (EIS Order No. 91176).

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Final

Springfield Municipal Water Intake, Permit, Greene County, Mo., November 23: Proposed is the issuance of a permit for the construction and operation of a raw sewer intake structure at mile 95.4 on the James River for the city fo Springfield in Greene County, Missouri. the project would include the construction of 10 deep wells and a new

30-million-gallon-per-day treatment plant. The alternatives consider various methods of both interim and long term water supply. (Little Rock district). Comments made by: DOT, USDA, DOC, HEW, EPA, DOI, state and local agencies, groups, individuals and businesses. (EIS Order No. 91175.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377–4335.

National Oceanic and Atmospheric Administration

Draft

Groundfish Fishery of The Pacific Coast, FMP, Pacific Ocean, November 23: Proposed is the implementation of a fishery management plan for the groundfish fisheries off the coasts of Washington, Oregon and California. The plan will provide individual species management for sablefish, Pacific whiting, Pacific ocean perch and shortbelly rockfish. Each species would be assigned an individual OY because of either the harvesting method or stock condition. The recreational fishery will be managed by bag limits and gear regulations. (EIS Order No. 91172.)

Final

Washington CZM, Evans Policy Deletion, Amendment 1, Washington, November 23: The proposed action is an amendment to the Washington coastal zone managment program deleting the Evans Policy Statement on oil port location. This policy statement deals with the siting of a single major crude petroleum transfer site at or west of Port Angeles. The action is proposed in response to a request from Governor Dixie Lee Ray of the State of Washington. The legal analysis performed has shown the policy statement to be unenforceable under both state and Federal law. Alternatives to approve, delay, or deny the proposed amendment have been addressed. Comments made by: EPA, AHP, GSA, USDA, DOC, DOE, state, and local agencies, groups, individuals and businesses. (EIS order No. 91178.)

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G–064, Forrestal Building, Washington, D.C. 20585, (202) 252–4600.

Draft

Energy Performance Standards for new Buildings, Regulatory, November 23: Proposed is the establishment of Energy Performance Standards for new buildings. The standards, designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of renewable sources of energy, are comprised of two fundamental elements: (1) maximum levels of allowable annual energy requirements and (2) a method for calculating annual energy requirements. (EIS Order No. 91187.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, (617) 223–4635.

EPA, Region 1

Draft

Southern Rockingham 208 Project, Rockingham County, N.H., November 23: Proposed is a 208 project for the southern Rockingham planning region in Rockingham County, N.H. The project is divided into seven areas for the towns of Atkinson, Hampstead, Kingston, Newton, Plaistow, Salam and Windham. (EIS Order No. 91183.)

FEDERAL ENERGY REGULATORY COMMISSION

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Room 3000, S–22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 275–4150.

Draft

North Fork Stanislaus River, project No. 2409, Calaveras County, Calif., November 23: Proposed is the issuance of a license for the North Fork Stanislaus River project No. 2409, a conventional hydroelectric operation in Calaveras County, California. The license would authorize the construction of 5 dams, 2 powerhouses, 2 tunnels, access roads, transmission lines, recreational facilities, and appurtenant facilities. The alternatives consider: (1) alternative design, construction and operation; (2) other sites; (3) forms of generating equivalent power; and (4) denial of application. (FERC–EIS–0011–D) (EIS Order No. 91182.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, (202) 566–1416.

Final

IRS Midwest Service Center, Kansas City, Jackson County, Mo., Wyandotte County, Kans., November 23: Proposed is the construction of a replacement facility for the Internal Revenue Service—Midwest Service Center at one of four proposed sites in urban Kansas City, Jackson County, Missouri and Kansas City, Wyandotte County, Kansas. The facility will consist of a four-building complex with two sub-levels for parking and have an occupiable area of about 1,366,700 square feet. Of this space 770,000 square feet will be used for parking and the remainder to house an estimated 6,200 employees. Seven alternatives are considered. Original draft, No. 50290 filed 3–3–75 was replaced by revised draft No. 90903 filed 8–22–79. (EMO/KS–79002) Comments made by: EPA, HEW, HUD, COE, USDA, DOT, AHP, State and local agencies, groups, individuals and businesses. (EIS Order No. 91174.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6306.

Draft

The Foothills Planned Development, Salt Lake County, Utah, November 19: Proposed is the issuance of HUD home mortgage insurance for the construction of 650 single-family detached units located within The Foothills Planned Unit Development, Riverton City, Salt Lake County, Utah. The development in total will include: (1) 1,800 single-family homes, (2) 200 multi-family residential units, (3) 80 acres of parks and open space, and (4) a 15 acre shopping center. (HUD–R0B–EIS–79XVIID) (EIS Order No. 91169.)

Final

Gentry-Waipo, Waipo, Oahu, Honolulu County, Hawaii, November 19: Proposed is the issuance of HUD home mortgage insurance for the Gentry-Waipo, Honolulu County, Oahu Island, Hawaii. The project area is 510 acres and will contain an ultimate population of about 11,800. Development consists of 3,700 housing units on 278 acres, 120 acres for light industrial use, a commercial area of 14 acres, public facilities on 24 acres, and the balance in open space and rights-of-way. (HUD–R09–EIS–78–10F) Comments made by: USDA, DOC, USN, DOI, DOT, EPA. (EIS Order No. 91167.)

Final

Rice Lake Trails and Lake Wood Developments, Hennepin County, Minn., November 23: Proposed is the issuance of HUD home mortgage insurance for the Rice Lake Trails and Lake Wood Developments located in Maple Grove, Hennepin County, Minnesota. Phases of development will include the construction of approximately 1,746 housing units of which 802 will be single family, while the remainder are to be double family and townhouses. Land area within the development is being reserved for open space and recreational use. (HUD–R05–EIS–79–03(F)). Comments made by: DOC, DOT, DOI, COE, EPA, State and Local Agencies. (EIS Order 91186).

Easthill Subdivision, Mortgage Insurance, Shelby County, Tenn., November 23: Proposed is the issuance of HUD home mortgage insurance for the Easthill subdivision in northeast Shelby County, Tennessee. The project will encompass approximately 4,932 dwelling units of mostly single-family homes and some townhouses. The development will be built on approximately 1159.6 acres. (HUD–R04–EIS–77–27F). Comments made by: COE, HEW, GSA, DOI, USDA, EPA, TVA, State and Local Agencies, Businesses. (EIS Order 91179).

Section 104(H). The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

University City, Rehabilitation Project No. 2 Wayne County, Mich., November 23:

Proposed is the issuance of a community development block grant to the city of Detroit, Wayne County, Michigan. The city proposes to implement the development phase of the University City Rehabilitation project No. 2 in accordance with the proposed development plan. The project area consists of a 110-acre area on the city's near west side. The bulk of the area had been previously cleared as a part of an urban renewal project. The plan proposes the construction of a new subsidized and market rate housing, a neighborhood shopping center and the rehabilitation of existing structures. (EIS Order No. 91185.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

BUREAU OF LAND MANAGEMENT

Final

Shoshone Area, Livestock Grazing Mgmt., Program Several Counties, Idaho, November 20: Proposed is a revised livestock grazing management program for the Bennett Hills, Timmerman Hills and Magic Planning units, of the Shohone grazing area district, located in the counties of Lincoln, Gooding, Elmore, Blaine, and Camas, Idaho. The plan involves rest-rotation and deferred-rotation grazing, along with minor annual spring use. Proposed initial livestock use in the area would be 38,138 animal unit months. Also included are water developments, pipelines, fencing, seeding, herbicide spraying, and burning. (FES-79-61). Comments made by: DOT, USDA, DOI, State and Local Agencies, Groups, Individuals and Businesses. (EIS Order No. 91171.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Enviornmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555, (301) 492-8446.

Draft Supplement

Peeble Springs Nuclear Plant Units 1 and 2 (DS-1), Gilliam County, Oregon, November 23: This statement supplements a final EIS, #50599, filed 4-21-75. Proposed is the issuance of permits for the construction and operation of the Peeble Springs Nuclear Plant, Units 1 and 2 near the Columbia River in Gilliam County, Oregon. The plant would employ two pressurized water reactors to produce up to 3,670 mwi per unit. Two steam turbine generators could use this heat to produce up to 1,311 mwe per unit. Exhaust Steam will be cooled by a once-through flow of water from a 1,900 acre man-made reservoir. Makeup would be drawn from the Columbia River. (Nureg-75/025). (EIS Order #91173).

DEPARTMENT OF TRANSPORATION

Contact: Mr. Martin Convisser, Director, Office of Enivornmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

US 20/IL-84 Improvement, Galena River Bridge, Jodaviess County, Ill., November 23: Proposed is the improvement of US 20/IL-84 from third street to prospect street in Galena, Jodaviess County, Illinois, also included in the project is the replacement of a bridge crossing the Galena River. The project length is approximately 1,900 feet. The bridge is proposed to be a two-lane reinforced concrete structure. The alternatives consider: (1) no-build, (2) building in a corridor other than the existing one, (3) rebuilding the existing bridge, (4) constructing the new bridge at the same elevation as the old, and (5) raising the new bridge and approaches to current standards. (FHWA-IL-EIS-79-05-D). (EIS Order #91180).

City of Columbia Railroad Relocation-Consolidation, Richland County, S.C., November 23: Proposed for the city of Columbia, Richland County, South Carolina is a railroad relocation, consolidation and grade crossing elimination project. The project involves placing the consolidated railroad tracks below ground level in the central city and construction of grade separation structures. Approximately 80 percent of the proposed alignment is located on existing railroad or street right-of-way. (FHWA-SC-EIS-79-03). (EIS Order #91181).

Draft

Appalachian Corridor G, Chattaroy to Miller Creek, Mingo County, West Virginia: Proposed is the Construction of a portion of Appalachian Corridor G in Mingo County, West Virginia. The facility extends from 0.35 miles south of WV-14 near Chattaroy to a completed section of Corridor G at Miller Creek. The facility would be a four-lane highway paralleling the Tug Fork River. In addition to no build, six alignment alternatives are considered. The length of the project varies from 5.2 to 6.3 miles in length depending on the alternative chosen. (FHWA-WV-EIS-79-01-D). (EIS Order #91168).

Final

I-84 and I-86, E. Hartford-Manchester, Hartford County, Conn., November 23: Proposed is the construction of 3 major road sections in E. Hartford and Manchester, Connecticut. The 3 parts of the project are: (1) 2-mile improvements to the existing I-84 in E. Hartford from Roberts St. to Forbes St.; (2) a 1.4-mile I-84 connector section from the existing I-84 from Forbes and Spencer Sts. in Manchester; and (3) a 1.5-mile improvement to the existing I-84 in Manchester from the E. Hartford town line to the west middle turnpike. (FHWA-CONN-EIS-77-01-F). Comments made by: COE, HUD, DOI, DOT, State and Local Agencies, Groups, Individuals and Businesses. (EIS Order #91188).

Final Supplement

I-310 (Formerly I-410) I-10 to US 90, St. Charles County, La, November 23: This statement supplements a final EIS, #21625, filed 2-9-72. Proposed is the construction of I-310 (formerly I-410) from I-10 to US 90 in St. Charles Parish, Louisiana. The project would include a crossing over the Mississippi River at Luling. The alternatives consider no-build, mass transit, and highway construction. Eleven alignment alterations are considered under highway construction. (FHWA-LA-EIS-71-10-FS). Comments made by: USDA, DOC, COE, USDA, DOT, EPA, State and local agencies, groups, individuals and businesses. (EIS Order #91177).

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Director, Office of Environmental Activities (004A), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389-2526.

Draft

Spinal Cord Injury Unit, land acquis. and const., Shelby County, Tenn., November 23: Proposed is the acquisition of eight parcels of land plus a reserved accessway totalling approximately three and a half acres adjacent to the present VA Hospital site, and to construct a spinal cord injury unit located in Memphis, Shelby County, Tennessee. Two alternatives have been considered: 1) The construction of the facility without any land acquisition; and 2) no action. The preferred alternative of the VA is the proposed land acquisition and facility construction. (EIS Order #91184).

EIS's Filed During the Week of Nov. 19 to 23, 1979

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date filed	Originating agency No.
California	Calaveras	Draft	North Fork Stanislaus River, Project No. 2409	91182	11-23-79	FERC.
Connecticut	Hartford	Final	I-84 & I-86, E. Hartford-Manchester	91188	11-23-79	DOT.
Hawaii	Honolulu	Final	Gentry-Waipo, Waipo, Oahu	91167	11-19-79	HUD.
Idaho	Several	Final	North Idaho Forests Silvicultural Treatments	91170	11-19-79	USDA.
		Final	Shoshone Area, Livestock Grazing Mgmt. Program	91171	11-20-79	DOI.
Illinois	Jodaviess	Draft	US 20/IL-84 Improvement, Galena River Bridge	91180	11-23-79	DOT.
Kansas	Wyandotte	Final	IRS Midwest Service Center, Kansas City	91174	11-23-79	GSA.
Louisiana	St. Charles	Supple	I-310 (Formerly I-410) I-10 to US 90	91177	11-23-79	DOT.
Michigan	Wayne	Draft	University City, Rehabilitation Project No. 2	91185	11-23-79	HUD.

EIS's Filed During the Week of Nov. 19 to 23, 1979

State	County	Status	Statement Ltle	Accession No.	Date filed	Originating agency No.
Minnesota	Hennepin	Final	Rice Lake Trails and Lake Wood Developments	91186	11-23-79	HUD.
Missouri		Final	IRS Midwest Service Center, Kansas City	91174	11-23-79	GSA.
	Greene	Final	Springfield Municipal Water Intake, Permit	91175	11-23-79	COE.
New Hampshire	Rockingham	Draft	Southern Rockingham 208 Project	91183	11-23-79	EPA.
Oregon	Benton	Final	Alsea Planning Unit, Siuslaw National Forest	91176	11-23-79	USDA.
	Gilliam	Supple	Pebble Springs Nuclear Plant Units 1 and 2 (DS-1)	91176	11-23-79	NRC.
Oregon	Lane	Final	Alsea Planning Unit, Siuslaw National Forest	91176	11-23-79	USDA.
	Lincoln	Final	Alsea Planning Unit, Siuslaw National Forest	91176	11-23-79	USDA.
Pacific Ocean		Draft	Groundfish Fishery of the Pacific Coast, FMP	91172	11-23-79	DOC.
Regulatory		Draft	Energy Performance Standards for New Buildings	91169	11-19-79	DOE.
South Carolina	Richland	Draft	City of Columbia Railroad Relocation/Consolidation	91181	11-23-79	DOT.
Tennessee	Shelby	Draft	Spinal Cord Injury Unit, Land Acquis. and Const	91184	11-23-79	VA.
	Shelby	Final	Easthill Subdivison, Mortgage Insurance	91179	11-23-79	HUD.
Utah	Salt Lake	Draft	The Foothills Planned Development	91169	11-19-79	HUD.
Washington		Final	Washington CZM, Evans Policy Deletion, Amendment 1.	91178	11-23-79	DOC.
West Virginia	Mingo	Draft	Appalachian Corridor G, Chattaroy to Miller Creek	91168	11-19-79	DOT.

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
DEPARTMENT OF ENERGY					
Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, D.C. 20585, (202) 252-4600.	Energy Performance Standards for New Buildings.	Draft 91187	Nov. 30, 1979 (see app. I).	Extension	Jan. 28, 1979.
U.S. ARMY CORPS OF ENGINEERS					
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Marco Island/Vicinity Wetlands Development, Permit, Collier County, Florida.	Draft 90980	Sept. 28, 1979	Extension	Dec. 28, 1979.
DEPARTMENT OF COMMERCE					
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.	North Pacific, Bering-Chukchi Sea Herring FMP.	Draft 91128	Nov 9, 1979	Extension	Jan. 31, 1980.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn By the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-36971 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M

EXECUTIVE OFFICE OF THE PRESIDENT

Advisory Committee on Information Network Structure and Functions; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Administration announces the following meeting:

Name: Advisory Committee on Information Network Structure and Functions.
Date: Monday, December 17, 1979.
Time: 9 a.m. to 3 p.m.
Place: Room 3104, New Executive Office Building, 17th and Pennsylvania Avenue, N.W., Washington, D.C.
Type of Meeting: Open, subject to space limitations. Those wishing to attend must call the contact person below at least 48 hours in advance of the meeting.
Contact Person: Frank Brignoli, Advisory Committee Executive Secretary, Office of Administration, Executive Office of the President, Washington, D.C. 20500; Telephone 202-395-4784
Purpose of Advisory Committee: The Committee will advise the Director, Office of Administration (OA), on matters pertinent to OA's plans for the establishment of a communications network to serve the Executive Office of the President (EOP). The Committee will outline a structural and functional plan for the EOP network. This plan will be developed on the basis of current and expected technological developments and will strive for immediate implementation and a minimum useful life of ten years. The plan will address such issues as network hardware and protocol structure, expected structure of servers, gateways and other connections to the network expected feasible functions, and privacy and authentication mechanisms.

A final report containing the plan is contemplated, and it should provide answers to three questions:

1. What kind of a network should the EOP have?
2. What is it likely to cost?
3. How long is it likely to take to implement?

Agenda

9 a.m.—Networking Capabilities: Telenet.
9:45 a.m.—Networking Capabilities: Tymnet.
10:30 a.m.—Coffee Break.
10:45 a.m.—Discussion: Information Network Structure and Functions.
12:30 p.m.—Luncheon Break.
1 p.m.—Resume.
3 p.m.—Adjourn.

William Pollak,
General Counsel.

[FR Doc. 79-36958 Filed 11-29-79; 8:45 am]
BILLING CODE 3115-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

[30101]

Privacy Act of 1974; Systems of Records; Amendments

Correction

In FR Doc. 79-36064 appearing at page 66991 in the issue for Wednesday, November 21, 1979, make the following changes:

1. On page 66992, the first column, in the paragraph following the heading "ROUTINE USES * * *", the third line which reads "individuals for concern whose names" should read "individuals or concerns whose names".
2. In the same paragraph, the fifteenth line which reads "personnel management investigatory" should have a comma after "management". The sentence should read "personnel management, investigatory".
3. On page 66992, the middle column, in the heading reading "ROUTINE USES * * *", the phrase "DISCLOSURE MAY BE MADE TO:" is not a part of the heading and should appear in a separate paragraph as follows: "Disclosure may be made to:".
4. On page 66992, the third column, in the heading reading "ROUTINE USES * * *", the phrase "DISCLOSURE MAY BE MADE TO:" is not part of the heading and should appear in a separate paragraph as follows: "Disclosure may be made to:".
5. On page 66993, the middle column, the item designated "(5)", the last line which reads "government-wide personnel management;" the semi-colon should be replaced by a comma and the following material added: "investigatory, adjudicatory and appellate functions within their respective jurisdictions;".

BILLING CODE 1505-01-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, N.W., 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. LM-28.
Filing Party: R. Frederic Fisher, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Summary: Agreement No LM-28 is a memorandum of agreement between members of the Pacific Maritime Association (PMA) concerning assessments to pay ILWU-PMA Employee Benefit Costs. The agreement relates that the PMA collective bargaining agreements with the International Longshoremen's and Warehousemen's Union (ILWU) provide for the employee benefits of vacation pay, holiday pay, health and welfare, pension, pay guarantee and voluntary travel pay. PMA and the ILWU have established trusts or plans to pay or provide these benefits and PMA's members are required to make contributions to the trusts and plans to fulfill their collectively-bargained obligations. In view of the changing circumstances in the industry, PMA's

Board of Directors has recommended to the PMA membership that the methods of determining contribution rates should be changed, and Agreement No. LM–28 represents the members' agreement on a new assessment method.

As provided by Agreement No. LM–28, the new assessments for funding ILWU employee benefit costs are determined on the basis of a comprehensive formula set forth in the agreement. The LM–28 formula is based on the recommendations of an independent consultant employed to determine if any modifications to the existing formulae were desirable, and, if so, to recommend modifications or alternatives which would operate in the best interests of the industry. The LM–28 formula enumerates the ILWU employee benefits and defines certain assessment categories for each of these benefits. Each assessment category in turn defines the basis for assessment for that assessment category (in terms of manhours or tonnage) and is assigned a percentage of the total cost of providing the benefit. For example, the prototype for assignment of Pension Benefit costs to assessment categories is:

Assessment category:	*Percent total cost assigned to category*
Coastwide manhours	28.2058
Coastwide container tonnage	28.3077
Coastwide general cargo tonnage	25.9864
Coastwide lumber and log tonnage	13.7473
Coastwide auto and truck tonnage	1.5930
Coastwide dry bulk tonnage	2.1598

The assessment rate for a category is calculated by dividing the benefit cost assigned to the category by the category tons estimated to be loaded or discharged, or by the category manhours estimated to be paid during the estimate period, and the calculation is to be revised each year as more current data becomes available.

Upon its implementation, the assessment method provide for by Agreement No. LM–28 will supersede the assessment methods utilized heretofore under Federal Maritime Commission Agreements Nos. LM–4, *et al.* (PMA–ILWU longshoremen and clerks collective bargaining agreement), LM–7 (PMA voluntary travel system agreement), LM–23, *et al.* (PMA–ILWU watchmen collective bargaining agreement), LM–24, as amended (PMA–ILWU walking bosses and foremen collective bargaining agreement), and T–2635 (PMA pay guarantee plan agreement).

By Order of the Federal Maritime Commission.

Dated: November 26, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-36862 Filed 11-29-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Independence National Corporation is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain voting securities of I.C.H. Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 16, 1979.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and require that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-36887 Filed 11-29-79; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Reliance Group, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of the assets of UV Industries, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 21, 1979.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition Room 303, Federal Trade Commission, Washington, D.C. 20580, (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 8A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consumption of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-36888 filed 11-29-79; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: J. Walter Thompson Company is granted early termination of the 30-day period provided by law and the premerger notification rules with respect to its proposed acquisition of all the voting securities of World Wide Agency. The grant was made by the

Federal Trade Commission and the Assistanct Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 16, 1979.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers of acquisitions to give the Commission and Assitant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-36889 Filed 11-29-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79F-0392]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Ciba-Geigy Corp. has filed a petition proposing the safe use of tetrakis[methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and thermal stabilizer in poly-1-butene and butene/ethylene copolymer used in articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3226) has been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tetrakis–methylene (3-5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and thermal stabilizer in poly-1-butene resins and butene/ethylene copolymers used in articles intended for food-contact use.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the requirement of an environmental impact analysis report and that no environmental impact statement is necessary.

Dated: November 20, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-36531 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0393]

E. I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours & Co. has filed a petition proposing the safe use of nylon 612/6 copolymer as a stabilizer with polyoxymethylene homopolymer to be used in articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B3453) has been filed by E. I. du Pont de Nemours & Co., Wilmington, DE 19897, proposing that § 177.2480 *Polyoxymethylene homopolymer* (21 CFR 177.2480) and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010), be amended to provide for the safe use of nylon 612/6 copolymer as a stabilizer with polyoxymethylene homopolymer to be used in articles intended for food-contact use.

The agency has determined that the proposed action falls under § 25.1(f)(3) (21 CFR 25.1(f)(3)) and is exempt from the requirement of an environmental impact analysis report and that no environmental impact statement is necessary.

Dated: November 20, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-36532 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

Panel on Review of Miscellaneous External Drug Products; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Miscellaneous External Drug Products by the Secretary of Health, Education, and Welfare for an additional period of 2 years beyond October 31, 1979. The charter for this committee will expire October 31, 1981.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Officer (HFA–306), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: November 23, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-36666 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

Panel on Review of Miscellaneous Internal Drug Products; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Miscellaneous Internal Drug Products by the Secretary of Health, Education, and Welfare for an additional period of 2 years beyond October 31, 1979. The charter for this committee will expire October 31, 1981.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Officer (HFA–306), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: November 23, 1979.
William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 79-36697 Filed 11-29-79; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 79P-0091]

Wien Laboratories, Inc.; Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is publishing for public comment the recommendation of the Clinical Chemistry and Hematology Device Classification Panel that the Tri-Cy Test Set be reclassified from class III (premarket approval) into class II (performance standards). This recommendation was made after review of a reclassification petition filed by Wien Laboratories, Inc., Succasunna, NJ 07876. After reviewing the Panel recommendation and any public comments received, the agency will approve or deny the reclassification by order in the form of a letter to the petitioner. The agency's decision on this reclassification petition will be announced in the Federal Register.

DATE: Comments by December 31, 1979.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene W. Rice, Bureau of Medical Devices (HFK-440), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On July 5, 1978, Wien Laboratories, Inc., Succasunna, NJ 07876, submitted to the Food and Drug Administration (FDA) a premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) (the act) stating that it intended to market a device the manufacturer calls "Tri-Cy Test Set." After reviewing the information in the premarket notification FDA determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976; nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Upon this determination, the device is automatically classified into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)).

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III under section 513(f)(1) can be marketed, it must either be reclassified under section 513(f)(2) or have an approval of an application for premarket approval under section 515, unless there is in effect for the device an investigational device exemption under section 520(g) (21 U.S.C. 360j(g)).

On August 21, 1978, Wien Laboratories, Inc., filed with the FDA Hearing Clerk, a reclassification petition for the device under section 513(f)(2) of the act. On November 8, 1978, the Clinical Toxicology Section of the Clinical Chemistry and Hematology Device Classification Panel reviewed the petition and recommended that the device not be reclassified into class II. The agency published a notice of the Panel recommendation in the Federal Register of March 20, 1979 (44 FR 16961). The petitioner withdrew the first petition on March 20, 1979, and filed a new petition for reclassification of this device on March 21, 1979.

Section 513(f)(2) of the act requires FDA to refer a reclassification petition to the appropriate Panel and to receive a recommendation on whether to approve or deny the petition within 90 days after referral. The act also requires FDA to provide an opportunity for interested persons to submit data and views to the Panel. FDA ordinarily meets the latter requirement by scheduling an open Panel meeting on the petition. In this case, however, a meeting of the Clinical Chemistry and Hematology Panel could not be scheduled that would enable the Panel to make its recommendation within the required 90 day period. FDA obtained a recommendation on this petition by mailing it to voting Panel members. The agency also published in the Federal Register of May 15, 1979 (44 FR 28421), a notice inviting interested persons to submit data, information, and views for consideration by the Panel. The notice stated that any data, information and views submitted by June 14, 1979 would be mailed to the Panel members for their consideration before recommendations were made. No data, information or views were submitted. The recommendations of the Panel members that the device be reclassified into class II were received by July 9, 1979.

To determine the proper classification of the device, the Panel considered the criteria specified in section 513(a)(1) of the act. For the purpose of classification, the panel assigned to this generic type of device the name "radioimmunoassay, tricyclic antidepressant drugs" and described this type of device as an in vitro diagnostic test kit used to detect and measure imipramine, desipramine, amitriptyline, nortriptyline, protriptyline, or doxepin in human serum.

Summary of the Reasons for the Recommendation

The Panel made the following determinations in support of its recommendation:

1. The device is not an implant, nor is it life supporting or life sustaining.
2. General controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device. Sufficient scientific and medical data exist to establish a performance standard to provide such assurance.
3. The device is potentially hazardous to life or good health because incorrect information may be derived from the device if it does not perform properly.
4. Radioimmunoassay (RIA) has been compared with the reference methodology of gas liquid chromatograph-mass fragmentometry (GLC-MF).
5. A performance standard can be developed to address the risk of inaccurate results presented by this device and provide reasonable assurance of its safety and effectiveness.

Summary of Data on Which the Recommendation Is Based

Comparison studies between the Tri-Cy Test Set and the reference methodology of gas liquid chromatography-mass fragmentometry were run on 10 patient samples for amitriptyline and nortriptyline, 10 patient samples for nortriptyline, and 29 patient samples for imipramine and desipramine. The correlation coefficient for these studies were 0.92, 0.90, and 0.93, respectively. The data presented by the manufacturer substantiate that the assay is inherently less accurate for the quantitation of the tertiary amine drugs, imipramine and amitriptyline. However, the test can be used to assist the physician in determining therapeutic and toxic levels of these medications.

Risks to Health

The Panel noted that there is a risk of inaccurate results from the use of the device that may lead to improper treatment of chronic depression. Inaccurate results may arise from lack of specificity and sensitivity of the device. Therefore, the Panel recommended that a standard be developed to address these risks and that development of this standard be a high priority.

Additional Findings

The Panel made the following additional findings:

1. To ensure its safe and effective use, the device will require special labeling describing the limitations of the procedure for the measurement of the tricyclic antidepressant drugs, amitriptyline, imipramine, protriptyline, and doxepin.

2. The test is useful for the determination of acute toxicity and for therapeutic monitoring of desipramine or nortriptyline, the secondary amine antidepressant drugs and, to a lesser degree, for therapeutic monitoring of the other tricyclic drugs, amitriptyline, imipramine, protriptyline, and doxepin.

3. The manufacturer has revised the labeling to state that "unpredictable errors may result due to the fact that the parent drugs (tertiary amines, amitriptyline and desipramine) differ markedly in their reactivity with the nortriptyline antibody."

4. A step-by-step protocol for use by the analyst has been included. Performance data on accuracy, precision, specificity of antibody, and interfering substances have been included.

References

The petition and the following material are on public file in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Luchins, D. and J. Amanth, "Therapeutic Implications of Tricyclic Antidepressant Plasma Levels," *Journal of Nervous and Mental Disease*, 162:430–436, 1976.

2. Turner, P., "Radioimmunoassay for Nortriptyline and Amitriptyline," *Lancet*, 1:1316, 1977.

3. Burrows, G., K. Maguire, B. Scoggins, J. Stevenson, and B. Davies, "Plasma Nortriptyline and Clinical Reponse—A Study Using Changing Plasma Levels," *Psychological Medicine*, 7:87–91, 1977.

4. Hucker, H. B., and S. C. Stauffer, "Rapid, Sensitive Gas-Liquid Chromatographic Method for Determination of Amitriptylene in Plasma Using a Nitrogen-Sensitive Detector," *Journal of Chromatography*, 138:437–442, 1977.

5. Watson, I. D., and M. J. Steward, "Quantitiative Determination of Amitriptyline and Nortriptyline in Plasma by High Performance Liquid Chromatography," *Journal of Chromatography*, 132:155–159, 1977.

6. Gram, L. F., et al., "Comparison of Single Dose Kinetics of Imipramine, Nortriptyline and Amitriptyline in Man," *Psychopharmacology*, 50:21–27, 1976.

7. Bickel, M. H., "Binding of Chlorpromazine and Imipramine to Red Cells, Albumin, Lipoprotein and Other Blood Components," *Journal of Pharmacy and Pharmacology*, 27:733–738, 1975.

8. Silver, G., and R. Braithwaite, "Interaction of Benzodiazepines with Tricyclic Antidepressants," *British Medical Journal*, 4:111, 1972.

Interested persons may, on or before December 31, 1979, submit written comments on this recommendation to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, Fishers Lane, Rockville, MD 20857. Comments should be in four copies (except that individuals may submit single copies of comments), identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-36533 Filed 11-23-79; 10:31 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0422; DESI 5812]

Aminophylline Suppositories; Drugs for Human Use: Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice amends a previous notice on aminophylline rectal suppositories with benzocaine, to revise the drug's indication, to add contraindication statements to the labeling and to state the bioavailability requirement for the drug.

DATES: Supplements for labeling and manufacturing due January 29, 1980; bioavailability data due May 28, 1980.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 5812, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications or supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for guidelines or information on conducting bioavailability tests: Division of Biopharmaceutics (HFD–520), Bureau of Drugs.

Requests for labeling guidelines: Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Carol Kimbrough, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5812) published in the Federal Register of July 28, 1972 (37 FR 15185) (Docket No. FDC–D–493; now Docket No. 79N–0422), the Food and Drug Administration announced its conclusions about the following drug product: NDA 5–812; Aminophylline Supposicones with Benzocaine; G. D. Searle & Co., Chicago, IL 60680. (The drug product is no longer manufactured by this firm.) The notice stated that the drug product is effective for bronchial asthma but lacks substantial evidence of effectiveness for status asthmaticus and congestive heart failure. An opportunity for hearing was offered on the indications for which approval was proposed to be withdrawn because of lack of evidence of effectiveness. No hearing was requested, and approval of those indications is hereby withdrawn.

The July 28, 1972 notice also provided that any person applying for approval to market the product could do so by submitting an abbreviated new drug application (ANDA), to include adequate data for assuring the bioavailability of the drug.

This notice amends the July 28, 1972 notice by revising the indications for aminophylline suppositories, with or without benzocaine, adding contraindication statements, and stating the bioavailability requirement for the drug.

Background

The bioavailability of theophylline from the rectal suppository has been the subject of several studies. These studies all indicate that both the rate and extent of absorption of theophylline from suppositories is slow, unreliable, and often associated with blood levels below the therapeutic range. In addition, results of an FDA contract study designed to compare the bioavailability of theophylline rectal suppositories indicated that a retention time of at least 6 hours is necessary to achieve maximum absorption of theophylline. However, it has been further shown that

25 to 50 percent of subjects administered different brands of theophylline suppositories could not retain the suppository for 6 hours, thus resulting in very low theophylline levels. Overall, theophylline suppositories showed bioavailability ranging from 68–79 percent compared to a solution, as evidenced by area under the curve and maximum concentrations. (In those subjects who retained the suppository for less than 6 hours, the bioavailability was as low as 17 percent, while in subjects who retained the suppository for longer than 6 hours, the bioavailability was 84–90 percent.) In addition, the times to achieve maximum concentration ranged from 3.6 to 4.3 hours for the three products studied under FDA contract, compared to 2.1 hours for the elixir.

Therefore, the erratic bioavailability of theophylline from suppositories has led to the conclusion that the use of theophylline suppositories is strictly limited to occasional, short-term use in chronic therapy and definitely contraindicated for acute therapy.

Notice

Based on the available data and information, the Director of the Bureau of Drugs finds that abbreviated new drug applications are appropriate for aminophylline rectal suppositories, with or without benzocaine, and clarifies the July 28, 1972 notice to that effect. The amended notice follows, with clarifications in parts A and B to provide more detail in the indication, to require contraindication statements, and to provide information on the requirement for bioavailability data.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder of the new drug application specifically named above, this notice applies to all persons who manufacture or distribute a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable under 21 CFR 310.6 to a similar or related drug product that is not the subject of an approved new drug application. It is a responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

The Director of the Bureau of Drugs has considered all available information and concludes that the July 28, 1972 notice should be amended as follows:

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that aminophylline rectal suppositories with or without benzocaine are effective for the indications in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in suppository form suitable for rectal administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

For short-term use for the relief and/or prevention of symptoms of chronic asthma and reversible bronchospasm associated with chronic bronchitis and emphysema.

Aminophylline rectal suppositories are *NOT* indicated for acute asthmatic attacks, and are to be used only when oral aminophylline preparations are temporarily contraindicated or poorly tolerated.

The reason for the limited use is that the degree of absorption of aminophylline from suppositories is often unpredictable. It is necessary to retain the suppositories for at least 6 hours in order to obtain absorption comparable to that from an oral solution, but study has shown that 25–50 percent of subjects cannot retain the suppositories for that length of time.

c. The following statements are added to the Contraindications section of the labeling:

Aminophylline rectal suppositories are *NOT* indicated for acute asthmatic attacks, and are to be used only when oral aminophylline preparations are temporarily contraindicated or poorly tolerated.

Contraindicated in the presence of irritation or infection of the rectum or lower colon.

3. *Marketing Status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before January 29, 1980, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)). In addition, on or before May 28, 1980, the holder of the application shall submit bioavailability data consisting of multiple dose studies of the finished product in chronic asthmatic patients.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. The bioavailability regulations (21 CFR 320.21) require any persons submitting an abbreviated new drug application after July 7, 1977 to include evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. Because of the bioavailability limitations described earlier in this notice, no waiver will be granted with respect to aminophylline suppositories, with or without benzocaine. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: November 19, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-36822 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76N-0353; DESI 9760 and 12180]

Certain Antilipemic Drugs; Drugs for Human Use; Drug Efficacy Study Implementation; Amemded Followup Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice amends the previous notice on certain antilipemic drugs by modifying their effective indication.

DATE: Supplements to approved NDA's and ANDA's due on or before January 29, 1980.

ADDRESS: Communications in response to this notice should be identified with the reference number DESI 9760 and 12180, and directed to the attention of the appropriate office named below.

Supplements to full new drug applications (identify with NDA number): Division of Metabolic and Endocrine Drug Products (HFD–130), Rm. 14B–03, Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications or supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register on September 2, 1977 (42 FR 44278), stating that the effective indication for aluminum nicotinate, sitosterols, and niacin (given at a dosage rate of 1 to 2 grams a day) is as follows: As adjunctive therapy in the treatment of patients with hypercholesterolemia and hyperbetalipoproteinemia who do not respond adequately to diet and other measures. The drug products which are subjects of the following approved new drug applications contain aluminum nicotinate, sitosterols, or niacin.

NDA 12–180; Nicalex Tablets containing 625 milligrams aluminum nicotinate; Merrell-National Laboratories Inc., 2110 E. Galbraith Rd., Cincinnati, OH 45215.

NDA 11–313; Nicotinic Acid Tablets containing 500 milligrams niacin; formerly marketed by Merrell-National Laboratories.

NDA 11–578; Efacin Tablets containing 500 milligrams niacin; Person & Covey Inc., 616 Allen Ave., Glendale, CA 91201.

NDA 9–760; Cytellin Suspension containing 3 grams sitosterols per milliliter; Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 46206.

NDA 11–073; Wampocap Capsules containing 500 milligrams niacin; Wampole Laboratories, Division Carter-Wallace Inc., Half Acre Rd., Cranbury, NJ 08512.

This notice applies not only to the above drug products included in the notice of September 2, 1977, but to the following abbreviated new drug applications not included in that notice. Each of the niacin products listed below contains 500 milligrams niacin.

ANDA 83–819; Cytellin containing 1.5 grams sitosterols per packet and 3 grams sitosterols per packet; Eli Lilly & Co.

ANDA 83–115; Niacin Tablets, Richlyn Laboratories, Inc., Caster Ave., and Kensington Ave., Philadelphia, PA 19124.

ANDA 83–136; Niacin Tablets; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiaque, NY 11726.

ANDA 83–180; Niacin Tablets; Zenith Laboratories Inc., 140 Legrand Ave., Northvale, NJ 07647.

ANDA 83–203; Niacin Tablets; Stanlabs Pharmaceutical Co., 232 S.E. Oak St., Portland, OR 97208.

ANDA 83–271; Niacin Tablets; Purepac Pharmaceutical Co., 200 Elmore Ave., Elizabeth, NJ 07207.

ANDA 83–305; Niacin Tablets; Danbury Pharmacal Inc., 131 West St., Danbury, CT 06810.

ANDA 83–306; Niacin Tablets; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

ANDA 83–453; Niacin Tablets; Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.

ANDA 83–525; Niacin Tablets; MK Laboratories, Inc., 424 Grasmere Ave., Fairfield, CT 06430.

ANDA 83–672 ; Niacin Tablets; Generic Pharmaceutical Corp., 433 Commercial Ave., Palisades Park, NJ 07650

ANDA 83–718; Niacin Tablets; West-Ward Inc., 465 Industrial Way West, Eatontown, NJ 07724.

ANDA 83–823; Nicolar Tablets; Armour Pharmaceutical Co., Box 511, Kankakee, IL 60901.

ANDA 84–237; Niacin Tablets; Tablicaps, Inc., P.O. Box 5555, Franklinville, NJ 08322.

ANDA 84–633; Niacin Tablets; Mylan Pharmaceuticals Inc., P.O. Box 4293, Morgantown, WV 26505

ANDA 84–687; Niacin Tablets; Zzeon Pharmaceuticals Ltd., 2681 Kelrin Ave., Irvine CA 92705.

ANDA 85–172; Niacin Tablets; Chelsea Laboratories, Inc., 428 Doughthy Blvd., Inwood, NJ 11696.

After reevaluating the effective indication for these drug products, the agency has modified it to include hypertriglyceridemia and pre-betalipoproteinemia. The revised terminology "significant hyperlipidemia (elevated cholesterol and/or triglycerides)" includes the above conditions, as well as hypercholesterolemia and hyperbetalypoproteinemia. In addition, this notice corrects an error in the dosage statement and clarifies the indication by deleting the vague term "other measures." Accordingly, the September 2, 1977 notice is amended by revising the indication and dosage statement under B.2.b. *Labeling conditions* to read as follows:

"The indication is as follows for aluminum nicotinate, sitosterols, and niacin (the latter given at a dosage rate of 1 to 2 grams three times a day):

"As adjunctive therapy in patients with significant hyperlipidemia (elevated cholesterol and/or triglycerides) who do not respond adequately to diet and weight loss."

Supplements to approved NDA's or ANDA's providing for appropriate revision of the labeling of drug products affected by this notice should be submitted on or before January 29, 1980. The revised labeling may be put into use before approval of the supplemental new drug application, but it shall be put into use no later than March 29, 1980.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)), and under the authority delegated to the director of the Bureau of Drugs (21 CFR 5.82)

Dated: November 19, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79–36823 Filed 11–29–79; 8:45 am]

BILLING CODE 4110–02–M

[Docket No. 76N–0002]

Diethylstilbestrol; Withdrawal of Approval of New Animal Drug Applications; Commissioner's Decision

Correction

In FR Doc. 79–29114 appearing at page 54852 in the issue of Friday, September 21, 1979 and corrected at page 66068 in the issue of Friday, November 16, 1979, second column; correction number 4 should have read: "In the third column of page 54870, second full paragraph, second line, '. . . Kliman attached . . .' should have read '. . . Kliman attacked . . .'"

BILLING CODE 1505–01–M

Office of Assistant Secretary For Education

Data Acquisition Activities

AGENCY: Office of the Assistant Secretary for Education, Department of Health, Education, and Welfare.

ACTION: Notice of Data Acquisition Activities Involving Educational Agencies and Institutions.

SUMMARY: The paperwork control requirements in Section 400A of the General Education Provisions Act, added by Pub. L. 95–561, require public announcement of certain data requests that Federal agencies address to educational agencies and institutions. The Education Division of HEW proposes to collect the data described below from educational agencies or institutions during School Year 1979–80.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth M. Proctor, FEDAC Staff, 400 Maryland Avenue SW., Washington, D.C. 20202 phone (202) 245–1022.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Control Amendments of 1978, section 400A of the General Education Provisions Act, the Secretary of Health, Education, and Welfare is responsible for reviewing and approving collection of information and data acquisition activities of all Federal agencies:

(1) Whenever the respondents are primarily educational agencies or institutions; and

(2) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal educaton programs. The Secretary has delegated authority to the Assistant Secretary for Education.

We publish interim FEDAC review procedures on August 8, 1979 (44 FR 46535), which are now effective. One requirement is that "no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it." I determine an unusual circumstance exists regarding the data activities listed below because of the newness of the review requirements.

Descriptions of proposed data acquistion activities for School Year 1979–80 are being published for comment. Most of these data acquisition activities were also listed—but not described in as much detail—in the Federal Register of February 15, 1979. Other activities previously approved were also in that list.

Each agency or institution subject to the request for data, its representative organizations, or any member of the public, may comment on the proposed data acquisition activity. The Federal Education Data Acquisition Council Staff accepts comments at the above address. Comments should refer to the specific sponsoring agency and form number and they must be received on or before December 31, 1979.

I ask the affected educational agencies and institutions to cooperate in the following data collection activities that are being reviewed by the Federal Education Data Acquisition Council (FEDAC) staff.

Mary F. Berry,

Assistant Secretary for Education.

Dated:

The proposed data collection activities are:

Description of a Proposed Collection of Information and Data Acquisition Activity

a. Title of Proposed Activity

Fall Enrollment and Compliance Report of Institutions of Higher Education, 1980 survey.

b. Agency/Bureau/Office

National Center for Education Statistics/Division of Postsecondary and Vocational Education Statistics/ Unviversity and College Surveys and Studies Branch.

c. Agency Form Number

NCES 2300–2.3A; 2300–2.3B.

d. Legislative Authority for this Activity

"* * * The (National) Center (for Education Statistics) shall—* * * collect, collate, and from time to time, report full and complete statistics on the condition of education in the United States * * *" (Sec. 406. (b) of Pub. L. 93–380; of the General Education Provisions Act, 20 U.S.C. 1221 e–1). The execution of Pub. L. 89–329, as amended requires the use of college enrollment data in making formula allotments in college work-study programs, state incentive grants, direct loans to students, equipment and remodeling, and others.

e. Concise Description of Proposed Activity

This activity involves the annual collection of enrollment data from all 3173 institutions of higher education in the United States as identified by the Education Directory: Colleges and Universities 1979–80. The numbers of students identified by each college and university are identified according to the students sex attendance status, race/ ethnicity, major field of study, and level of enrollment.

f. Voluntary/Obligatory Nature of Response

Mandatory: For those institutions subject to the requirements of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972; voluntary for all other institutions.

g. How Information Collected Will Be Used

1. The execution of Pub. L. 89–329 as amended, requires the making of formula allotments based upon the data collected from the Fall Enrollment Survey. More specifically the formula allotment programs using higher education survey data are:

Public Law	Program	Data required
Pub. L. 89–329, Title IV C	College Work Study Program	Total full-time enrollment in Higher Education including proprietary schools. Total estimated high school graduates "Related children" under 18 in families less than $3,000 p.a.
Pub. L. 89–329 as amended by Pub. L. 92–318 title IV–A, Subpart 3.	State Incentive Grants	*Total enrollment* in higher institutions including proprietary schools.
Pub. L. 89–329, Title IV, Part E	Direct Loans to Students	Total full-time enrollment in Higher Education including proprietary schools.
Pub. L. 89–329 as amended by Pub. L. 92–318 Sec. 601(b) equipment and remodeling. Sec. 601(c) T.V. equip.-remodeling.	Equipment and remodeling	F.T. & F.T.E. of degree-credit and nondegree-credit enrollment excluding proprietary schools in HE.
Pub. L. 89–329 as amended by Pub. L. 92–318, Title IV, Part A, Subpart 2.	Supplemental Education Opportunity Grants Initial Year Awards.	Total full-time and full-time equivalent degree-credit and nondegree-credit enrollment in insitutions of higher education and full-time equivalent enrollment in proprietary schools.
Pub. L. 89–329, Title X, Part A-2	Community Colleges and Occupational Education; Establishment and Expansion of Community Colleges.	*Population* 18 and over as of 4–1–70.
Pub. L. 89–329 as amended by H.E. Act, Title I, Part A	Community Services and Continuing Education	Total resident *population.*

2. Fall Enrollment data are also used to provide full and complete statistics on the condition of education in the United States, not only in their absolute form as standards of measurement and comparison, and in making projections,

but also in combination with other educational variables to calculate indices and perform other analyses.

In addition, these enrollment data are used by other Federal agencies, by Congress, by state education agencies, by institutions of higher education, by private education associations and organizations, by market and other research firms and individuals, and by students.

3. The race/ethnic and field of study data grouped by the various enrollment categories are used by the Office for Civil Rights to insure that institutions of higher education in the U.S. eligible to receive federal assistance are in compliance with federal laws which protect individuals from discrimination based on race, color or national origin. In addition, race data are also required for monitoring desegregation plans in 13 States named Adams vs. Califano under federal court order and under a recent U.S. District Court settlement to achieve a balanced compliance program in all institutions in the nation covered by Title VI.

h. Data Acquisition Plan

1. Method of collection: Mail. 2. Time of collection: October–November 1980. 3. Frequency: Annually. 4. Method of analysis: Data are arrayed in table format by U.S. Aggregation, State aggregation and institutional listing. Cross tabulation of the above categories are made by sex of student, attendance status, level of enrollment, type and control of institution attended, race/ethnicity of student and major field of study. A limited number of charts and graphs are prepared showing trend data of enrollments, percent change in enrollments from year to year, and enrollment distribution by selected categories.

i. Timetable for dissemination of Collected Data:

Approximately 2 months from due date of survey form a final enrollment count will be released through an NCES announcement. Approximately 7 months from survey due date, all data will be available through an NCES data tape. Approximately 12 months from due date of survey form a hard copy NCES publication will be released to the public.

j. Respondents

a. Type: College and universities. b. Number: 3173 institutional units. c. Estimated average man-hours per respondent: 2.0 hours.

k. Estimated Cost and Person Hours to the Respondents

$100.00 per institution X 3173 institutions=$317,300. Person-hours: 2.0 hours per institution X 3173 institutions=6,346 person hours.

l. Estimated Costs to the Federal Agency To Collect, Process and Analyze the Data

Contractor:	Cost
Data processing and collection	$286,000
Collection of race/ethnicity OCR	120,000
Publication costs: NCES	7,000
Salaries and expenses: NCES	47,833
Total	460,833

m. Information To Be Collected

Numbers of students enrolled in institutions of higher education by sex, and by level of enrollment, and by race, and by field of study.

n. Name and Address of Individual With Full Plan and Data Instruments

Dr. Andrew Pepin, National Center for Education Statistics, Room 3073, 400 Maryland Avenue SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Directory of In-School Alternatives to Suspension.

(b) Agency/Bureau/Office

National Institute of Education.

(c) Agency Form Number

NIE Form 223.

(d) Legislative Authority for the Activity

"(2) The Institute shall in accordance with the provisions of this section, seek to improve education in the United States, through concentrating the resources of the Institute on the following priority research and development needs—

"(B) overcoming problems of finance, productivity and management in educational institutions; * * *." (Section 405, General Education Provisions Act, as amended, 20 U.S.C. 1221e) Pub. L. 92–318.

(e) Concise Description of the Proposed Activity

This activity is part of a two phase impact study of in-school alternatives to student suspension, funded under a contract sponsored by the Institute. This study was published in the Federal Register on February 15, 1979, 44 FR 9881, as a proposed activity. The purpose of this activity is to gather background and program information on established public school programs which provide a viable in-school alternative to suspension of students out of school.

(f) Voluntary/Obligatory Nature of the Response

Voluntary.

(g) Justification of How Information Collected Will Be Used

The information collected will be used in the preparation of a directory of in-school alternative programs that will then be made available to administrators, board of education members, and teachers through their professional associations and by request. The information provided will give the reader a means of quickly determining in-school alternative program content and will provide the names and addresses of resource people who might be able to assist in the replication of the programs presented in the directory.

There is strong interest by practitioners to know more about these alternative programs, especially those that are well-established and have proven to be more viable than out-of-school suspensions. This directory, therefore, will expand the breadth of knowledge on these programs and, at the same time, offer tentative remedies for school systems that have disproportionate rates of out-of-school suspension.

(h) Data Acquisition Plan

(1) Method of Collection: Data will be collected using a structured survey form. Instruments will be mailed first-class to the program directors in approximately two hundred (200) in-school alternative to suspension programs. Sample programs will be identified by the contractor, the NIE project officer, researchers, and school practitioners who are aware of programs nationally. The mailing list from the NIE conference on in-school alternatives to Suspension (April 1978) will also help in identifying programs. Postage paid return envelopes will be provided to respondents.

(2) Time of Collection: Data collection is scheduled to begin in late October, 1979. Two follow-ups are provided for in the data collection plan, which will take place at three and six-week intervals following the mailing of the data collection instrument. Data collection should be completed about December 1, 1979.

(3) Frequency: Single time with appropriate follow-up procedures to handle any nonresponse or need for clarification of the data initially

reported. A response rate in excess of 90% (180) is anticipated.

(4) Method(s) of Analysis: Data will be reported in narrative form. There will be one entry per district in the directory. A number of cross-references will be prepared, e.g., by type of program, by State, by size (i.e., small district—300 to 5,000 students, medium-sized district—5,001 to 10,000 students, and large-sized district—10,001 + students), and so forth.

(i) Timetable for Dissemination of Collected Data

A final draft of the directory will be ready for distribution, assuming Project Officer and External Review Committee approval, by the end of February 1980. No funds are provided in the contract for the production and mailing of the directory. It is assumed that production will be handled by the Government Printing Office, and distribution will be under the aegis of NIE.

(j) Respondents

(1) Type: The respondent group is comprised of program directors of in-school alternative to suspension programs located in selected school districts in the United States.

(2) Estimated Number by Type: 200 in-school alternative to suspension program directors will be identified and will receive a questionnaire. This number was arrived at as an approximation of the number of in-school alternative programs currently in existence. It is not derived from any systematic sampling of an established population.

(3) Estimated Average Person Hours per Type of Respondent: We estimate the instrument will take, on the average, 45 to 60 minutes to complete. This yields a total range of burden hours across all sites of between 150 to 200 person hours.

(k) Estimated Costs and Person Hours to the Respondents (Total)

Assuming no more than an estimated total of .75 person hours will be required of each of the 200 respondents to complete the questionnaire at an estimated cost of $9.36 to each, the estimated total cost to the respondents would be $1,872 with an estimated total of 150 person hours.

(l) Estimated Costs to the Federal Agency To Collect, Process and Analyze the Data (Contract/S&E)

It is estimated by the contractor on this project, JWK International Corporation, that the total cost for collecting and processing the data (including postage) and producing a camera ready draft of the directory, will be approximately $16,700. Salary and expenses to the Federal agency are estimated to be $900.00.

(m).A List of Specific Data To Be Collected From Each Type of Respondent

The instrument is divided into four parts: Background History, Program Philosophy and Goals, Organizational Structure and Program Operations, and General Questions. Some items require a single response; some require multiple responses; and a few require narrative answers. Directions will be provided, where appropriate, for each such item.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) May Be Obtained

Dr. Antoine Garibaldi, School Organization and Management, Program for Educational Policy and Organization, NIE, Washington, D.C. 20208; telephone 202 254-6070.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Financial Status and Performance Report—Veterans' Cost-of-Instruction Payments Program.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of Higher and Continuing Education/Division of Student Services and Veterans Programs.

(c) Agency Form Numbers

OE 269-1 and OE 269-2.

(d) Legislative Authority for This Activity

Section 419(c)(1)(A)(iv) of the Higher Education Act of 1965, as amended) indicates that * * * "the applicant will submit to the Commissioner such reports as the Commissioner may require by regulation * * *". Section 189.33 of the rules and regulations governing the Veterans' Cost-of-Instruction Payments Program stipulates that a participant "* * * shall render-annually, * * * a full account of funds expended, obligated, and remaining." Section 189.35 of the Regulations requires that a participant "* * * must submit to the Commissioner no more than 30 days after the close of each academic year, a report describing the manner in which the required veterans' services were provided * * *". (20 U.S.C. 1070e) Pub. L. 92-318.

(e) Concise Description of the Proposed Activity

Financial Status Report.—Summary information will provide a full account of funds expended, obligated, and remaining, indicate the amount of support for the institutional program from other than Federal sources, and indicate the institutional share of the Federal award for instructional purposes.

Performance Report.—Information requested in this document will evidence assurances that the participant has made efforts to meet the criteria described in the Regulations (§ 189.16).

(f) Voluntary/Obligatory Nature of Response

Required to obtain or maintain benefits.

(g) Justification of How Information Collected Will Be Used

Financial Status Report.—Information will be used as the basis for determining project compliance with eligibility criteria imposed by Program legislation; as an effective measure of project accountability as indicated by project accomplishments. Data reported by participating institutions are used by the Branch to insure full accountability for Federal funds awarded, and to generate DFAFS/OEFMIS reconciliation computer tapes.

Performance Report.—Performance information is used to (1) develop profiles describing institutional services for veterans, the Office of Veterans' Affairs and demographic characteristics; (2) identify differences and similarities in institutions' veteran assistance programs; and (3) describe the degree to which institutions have met the major criteria listed in the Regulations.

(h) Data Acquisition Plan

1. Method of Collection: Mail
2. Time of Collection: Summer
3. Frequency: Annually
4. Methods of Analysis: The former Fiscal Operations Report was computerized; the OMB Financial Status Report is now in the process of design to computerize the data. Data secured by the Performance Report will result in a series of reports for dissemination to the participants and will provide a basis for the Commissioner's annual report.

(i) Timetable for Dissemination of the Collected Data

NA.

(j) Respondents

1. Type: Institutions of higher education
2. Number: 1,200

3. Estimated Average Person-Hours per Respondent: 1.5

(k) Estimated Costs and Person-Hours to the Respondents

NA.

(l) Estimated Costs to the Federal Agency To Collect, Process, and Analyze the data

NA.

(m) A List of the Specific Data To Be Collected From Each Type of Respondent

Standard Form 269, OMB 80-R0180 will be used to reflect the financial status of the VCIP Program, including the institutional share of Federal funds used for instructional purposes. The Performance Report is designed to secure information on the legislatively required services (Outreach; Recruitment, Special Education, and Counseling) and the required services and use of funds as stipulated in §§ 189.11, 189.12, 189.13, 189.14, 189.15, 189.16, and 189.35 of the rules and regulations governing the Veterans' Cost-of-Instruction Payments Program.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) May Be Obtained

Dorothy C. Parker, U.S. Office of Education, Veterans' Programs Branch, 400 Maryland Avenue, SW., Room 3514, ROB#3, Washington, D.C. 20202.

Description of a Proposed Collection of Information and data Acquisition Activity

(a) Title of Proposed Activity

Application packet for the Arts in Education Program.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of School Improvement/Arts and Humanities Staff.

(c) Agency Form Number

OE Form 449.

(d) Legislative Authority for the Activity

"To encourage and support programs that recognize and stress the essential role the arts can play in elementary and secondary education." Arts in Education Act of 1978, Pub. L. 95-561, Part C of Title III of the Elementary and Secondary Education Act of 1978, (20 U.S.C. 2961) Sec. 321(b)(2), CFR 13.566.

(e) Concise Description of the Proposed Activity

Application processing for Arts in Education Program Projects. Program description: Funds may be used to establish, conduct, or improve arts education programs, or provide developmental and technical assistance for arts education in elementary and secondary schools. Programs must be designed to involve all students at all grade levels in the school or schools served; must address the spectrum of major art forms, including dance, music, drama, visual arts; must integrate all of the major arts into the regular curriculum. Funds may be used to reimburse arts groups and organizations for assistance and services to State and local educational agencies in the planning and conducting of programs and projects. JOINT FUNDING: This Program is considered suitable for joint funding with closely related Federal financial assistance programs in accordance with the provisions of OMB Circular No. A-111. Grants require school-community collaboration. No more than 5% of the grant amount may be used for equipment. There is a 50% matching requirement in which teachers salaries may not be included as in-kind contributions.

(f) Voluntary/Obligatory Nature of Response

Require to obtain or maintain benefits.

(g) Justification of how Information Collected Will be Used

Program Management.—Data acquisition will determine eligibility of applicants as well as amount of grant award and Federal share of project budget.

Evaluation and Research.—Data: Figures on school population, including breakdowns on minorities and handicapped served, and the number of resource agencies involved with the project, serve staff in research and evaluation of the effectiveness of the overall program.

General Purpose.—Collected data will be reported to the Congress, various special concern task forces within the agency, and selectively to arts agencies outside the Federal government upon request.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.
(2) Time of Collection: Fall 1979-1982.
(3) Frequency: Annually.
(4) Method(S) of Analysis: N/A.

(i) Timetable for Dissemination of the Collected Data

N/A.

(j) Respondents

(1) Type: Local Education Agencies; State Education Agencies; Nonprofit organizations; and nonpublic, non-profit elementary/secondary schools, universities, libraries, arts councils, performing arts groups, etc.

(2) Estimated number by Type: Sample—300 respondents.

(3) Estimated Average Person-Hours Response Time per Type of Respondent: Average person-hours—20.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

6,000 person-hours at $6.25 per hour = $37,500.00; Total (all respondents).

(l) Estimated Costs to the Federal Agency to collect, Process and Analyze the Data (contract, S & E).

Initiation of grants	.62
Project review	1.00
Analyze/disseminate	.10
	[1]1.72

[1]Person-years at $13,014 per year = $22,383.00 + printing/mailing $6,000 = $28,383.00. Total cost to Federal Government.

(m) A list of the Specific Data to be Collected From Each Type of Respondent

Type of applicant, size of population to be served, types of activities to be conducted. Total budget for project with amounts requested from Federal Government and provided by project.

(n) Name and Address of Individual or Office From Which a Copy of the Full plan and the Data Instrument(s) may be Obtained

Harold Arberg, Director, Arts and Humanities Staff, 400 Maryland Avenue, SW., Washington, D.C. 20002.

A multiyear approval is requested.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Application for Certification for Participation In Programs Under Title IV of the Higher Education Act of 1965, As Amended.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of Student Financial Assistance/Division of Certification and Program Review.

(c) Agency Form Number

OE Form 633.

(d) Legislative Authority for the Activity

"Section 497A (a) * * * The Commissioner is authorized to prescribe such regulations as may be necessary to provide for * * * (2) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid

under this title; * * *" (20 U.S.C. 1088f–1).

(e) Concise Description of the Proposed Activity

Section 497 A of the Higher Education Act of 1965, as amended authorized the Commissioner to issue regulations providing for:

"The estalishment of reasonable standards of financial responsibility and appropriate institutional capability for the proper administration by an eligible institution of Title IV student financial aid programs."

Those regulations were published on September 28, 1979 (45 CFR Part 168). As a result of the publication of the regulations, data must be collected from institutions of postsecondary education and reviewed to determine the financial responsibility and administrative capability of these institutions to participate in programs of student financial assistance. For this reason the "Application for Certification * * *" has been prepared.

(f) Voluntary/Obligatory Nature of Response

Voluntary.

(g) Justification of How Information Collected Will Be Used

Information based upon standards and indices derived from the practice of the financial and educational communities and the experience of OE program managers will enable the Office of Education to make a determination regarding an institution's administrative capability and financial responsibility to successfully administer and participate in the following programs: Basic Educational Opportunity Grants, Guaranteed Student Loan, National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grants. The determination of financial responsibility and administrative capability helps insure: (1) Protection of the Federal financial interest; (2) preservation of the statutory purpose of the Federal student assistance programs; and (3) protection of the rights of students to adequate consumer information and proper financial refunds.

(h) Data Adquisition Plan

(1) Method of Collection: Mail.
(2) Time of Collection: Summer.
(3) Frequency: Triennial.

(i) Timetable for Dissemination of the Collected Data

The anticipated date for the first printing and mailing of the form is late December 1979. The format will be an application form (Application for Certification for Participation in Programs Under Title IV of the Higher Education Act of 1965, As Amended) which will be sent to institutions of postsecondary education through the U.S. mail. In successive years, it is anticipated that the "Application for Certification * * *" will be mailed two months prior to the start of each Fiscal Year.

(j) Respondments

(1) Type: Colleges and Universities, Non-Public Junior Colleges, Public Junior Colleges, Vocational/Technical Postsecondary Institutions.
(2) Estimated Number by Type: Colleges and Universities, 1300; Non-Public Junior Colleges, 300; Public Junior Colleges, 400; Vocational/Technical Postsecondary Institutions, 500.
(3) Estimated Average Person-Hours Response Time per Type of Respondment: 2.

(k) Estimated Costs and Person-Hours to the respondments (Total): $10.00 per hour per person; total cost—$50,000 total.

(l) Estimated Costs to the Federal Agency to Collect, Process and Analyze the Data: $535.00 for the initial mailing to 2500 institutions.

(m) A List of the Specific Data to be Collected From Each Type of Respondment:

Staffing, institutional workload related to the administration of the Federal student assistance programs, student withdrawals, fidelity bond coverage, internal financial controls, student information verification, compliance with student consumer information services and the making or originating of Guaranteed Student Loans.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) May be Obtained

Janet L. Buntebart, Acting Chief, Administrative Analysis Section, Institution and Lender Certification Branch, Division of Certification and Program Review; L'Enfant Plaza Station, P.O. Box 23838, Washington, D.C. 20024

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

The collection of Title VII student enrollment and identification information.

(b) Agency/Bureau/Office

U.S. Office of Education/Office of Bilingual Education.

(c) Agency Form Number

OE 676.

(d) Legislative Authority for this Activity

Title VII—Amendment to Title VII of the Elementary and Secondary Education Act of 1965. (Pub. L. 95–561).

Section 703(a)(4)(B): "a program of bilingual instruction may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 per centum. The objective of the program shall be to assist children of limited English language skills, and".

(e) Concise Description of the Proposed Activity

The U.S. Department of Health, Education, and Welfare established in 1978 a Management Initiative Tracking System (MITS) to ensure that operating programs fulfill their legislative mandates and achieve their programmatic purposes.

Under the MITS, the Office of Bilingual Education is required to seek verification of the percentages of limited English proficiency (LEP) children who are participating in the Title VII Basic Program throughout the Nation. The purpose of this particular initiative is to protect the Congressional intent to serve LEP children who are in the greatest need of the program and to meet the requirement of the Education Amendments of 1978 that "in no event" shall the percentage of non-LEP students participating in the Title VII program exceed 40 per centum. The goal is to achieve by December 31, 1979, not less than 60% LEP participation in each Title VII Basic project. The national goal is to achieve 75% LEP participation.

The Title VII funding applications for 1979–80 which were submitted on May 4 (continued) and June 1 (new) required each applicant to provide enrollment information on the proposed number of LEP and non-LEP to be served, however, the proposed number of students may have changed significantly since budget negotiations and new school enrollments have been completed. In order to complete our MITS objectives, it is necessary that we have an accurate count of the number of LEP and non-LEP students being served. Therefore, we are asking that all Title VII Basic programs submit student enrollment and identification information by completing the attached questionnaire and mailing it to us by December 1, 1979.

(f) Voluntary/Obligatory Nature of Response

Voluntary.

(g) Justification of How Information Collected Will Be Used

The proposed student enrollment and identification questionnaire will provide the OBE with current data to complete the MITS objectives. These data will be summarized in a report for transmittal to the Secretary in December 1979.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.
(2) Time of Collection: December 1, 1979.
(3) Frequency: One time only.
(4) Method(s) of Analysis: Level of data aggregation will be national; analytical method will be tabulations of descriptive data.

(i) Timetable for Dissemination of the Collected Data

Data will be summarized to indicate the aggregate percentage of LEP and non-LEP being served by Title VII. Data will be available by December 31, 1979.

(j) Respondents

(1) Type: Local Education Agencies.
(2) Estimated Number by Type: 585.
(3) Estimated Average Person-Hours Response Time Per Type of Respondent: 2.5 hours.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

$18,000.00 1500 hours.

(l) Estimated Costs to the Federal Agency to Collect, Process and Analyze the Data (Contract, S & E)

$700.00.

(m) A List of the Specific Data to be Collected From Each Type of Respondent

(1) The number of students being served by Title VII for school year 79–80.
(2) The number of LEP students for each language (i.e., Spanish, French, etc.) being served by Title VII.
(3) The methods used in determining eligibility of Title VII students.
(4) A description of instrument(s) if testing was conducted.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) may be obtained

Office of Bilingual Education, 400 Maryland Avenue, S.W., Reporter's Building—Room 421, Washington, D.C. 20202.

Summary of the Data Activity Plan

(a) Title of Proposed Activity

A Study of the Effectiveness of Procedures Undertaken to Prevent Erroneous Classification of Handicapped Children.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of Education for the Handicapped/Division of Innovation and Development.

(c) Agency Form Number

OE714.

(d) Legislative Authority for the Activity

The authorization for this activity can be found in Section 618(d)(2)(C) of Pub. L. 94–142 which requires a report to Congress on "an evaluation of the effectiveness of the procedures undertaken * * * to prevent erroneous classification of children * * *"

(e) Concise Description of the Proposed Activity

The purpose of this study is twofold: (1) To survey practices used to prevent erroneous classification (labelling as handicapped) of children in public education; and (2) to assess the soundness and effectiveness of those practices. Further, an examination of the procedural changes in educational classification resulting from implementation of Pub. L. 94–142 (The Education for All Handicapped Children Act) will also be undertaken. The study is divided into two phases, with each phase lasting one year. Phase I essentially involves design and planning of the study; Phase II, data collection and analysis. The study design calls for an in-depth analysis of policies and procedures in 100 Local Educational Agencies (LEAs).

(f) Voluntary/Obligatory Nature of Response

Voluntary.

(g) Justification of How Information Collected Will be Used

Evaluation—Information collected will be reported to Congress in the Annual Report on the implementation of Pub. L. 94–142. Additionally, information will be used to assist BEH in carrying our technical assistance activities. In particular, an attempt will be made to disseminate information to SEAs and LEAs on the best practices identified by this study.

(h) Data Acquisition Plan

(1) Method of collection: Interview, questionnaire, and document review. (2) Time of collection: October, 1980 through February, 1981. (3) Frequency: One time. (4) Method(s) of Analysis: Preliminary analysis procedures will incorporate item-by-item summaries presented via descriptive statisitics as well as selected cross-frequency tabulations, percentages, and measures of central tendency. More advanced analyses will involve use of inferential statistics to make generalizable statements about assessment practices. Further, where it is apparent that the collected data satisfy necessary analytical assumptions, regression techniques will be applied.

(i) Timetable for Dissemination of the Collected Data

October, 1981.

(j) Respondents

(1) Type	(2) Estimated number by type	(3) Hours[1]
District Administrator	100	1.5
School Administrator	500	1.5
Psychologist/Counselor	600	1
Support Staff	800	1
Special Education Teacher	1000	0.5
Regular Education Teacher	2500	0.5

[1] Estimated average person-hours repondent time per type of respondent.

(k) Estimated Costs and Person-Hours to the Respondents (Total)—

Total cost of respondents is estimated at $52,425 and total person-hours is estimated at 4,050 professional hours at $12.50 per hour and 300 clerical hours at $6 per hour.

(l) Estimated Costs to the Federal Agency To Collect, Process, and Analyze the Data

$500,000.

(m) A List of Specific Data To Be Collected From Each Type of Respondent.

Type of Respondent and Type of Data To Be Collected

(1) District Administrator, School Administrator.
- District policy concerning assessment services.
- Description of assessment services.
- Description of screening and referral services.
- Personnel qualifications for assessment services.
- Placement service options and descriptions.

(2) Psychologist/Counselor, Support Staff.
- Description of assessment instruments available.
- Description of assessment procedures.
- Description of personnel roles.
- Experience and qualification in assessment services.

(3) Special Education Teacher, Regular Education Teacher.
- List of assessment instruments available.
- Experience and qualification in assessment services.
- Extent of participation in training programs for referral and screening.

- Description of diagnostic curriculum planning.
- Extent of contact with psychologist/counselor and support staff.
- Perceived conditions/description of referral services.
- Perceived availablility of services (assessment and placement).

(n) Name and Address of Individual or Office From Which a Copy of the Data Instruments May Be Obtained

Lou Danielson, Bureau of Education for the Handicapped (DID/SPSB), 400 Maryland Avenue SW., Washington, D.C. 20202.

Note.—A waiver is being requested.

Summary of the Data Activity Plan

(a) Title of Proposed Activity

Survey of Special Education Services.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of Education for the Handicapped/Division of Innovation and Development.

(c) Agency Form Number

OE715.

(d) Legislative Authority for the Activity

The authorization for this procurement is found in Section 618(a) of Pub. L. 94-142 which states that "the Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free, appropriate public education of all handicapped children."

(e) Concise Description of the Proposed Activity

The study consists of four major activities. First, based on a nationally representative sample of 50 localities in 14 states, the study will provide a description of the quantity and types of special education and related services provided to handicapped children in four age groups between 0 and 21 years of age, who are served in a variety of educational placements ranging from regular classes to residential schools, and who are physically or mentally handicapped. Second, the study will assess the local organizational arrangements designed to deliver special education services to students of various ages and having diverse handicapping conditions. Third, the study will provide descriptive information on LEA policies and procedures regarding the provision of "medically related services" to handicapped students. And fourth, the study will compare the inventory of special education and related services in 1980-81 with a similar inventory of the same localities conducted in 1977-78.

(f) Voluntary/Obligatory Nature of Response

Voluntary.

(g) Justification of How Information Collected Will Be Used

Evaluation.—The descriptive information will be used to provide Congress (as mandated) with an assessment of the availability of special services and personnel in programs for the handicapped across the nation. Knowledge of the relationship between the delivery of services and interagency agreements and cooperative agreements will be used to suggest the efficacy of various practices and provide technical assistance to States. The comparison between special services provided in 1980-81 and 1977-78 will produce a statement of the law's impact during the initial years of implementation.

(h) Data Acquisition Plan

(1) Method of Collection.—Review of district records, semi-structured interviews and self-administered questionnaire.

(2) Time of Collection.—October 1980—February 1981.

(3) Frequency.—One time.

(4) Method(s) of Analysis.—Descriptive statistics for each variable will be generated, including frequencies, means, medians, and measures of variation. Raw service times will be transformed into pupil rates for each age, handicap and placement category after being adjusted to reflect class size, treatment group size, service frequency, duration and session length. Analysis of between-cell-variation within localities will be obtained for all variables. Variation among localities over collapsed dimensions of the study framework will be examined. Analysis of the individual student survey data will include cross tabulations of services prescribed and services received, within age, handicap and placement groups and will be evaluated by standard means of statistical significance.

(i) Timetable for Dissemination of the Collected Data

October, 1981.

(j) Respondents

(1) Type.—Special Education *Administrators,* District Administrators, and Directors of Other Agencies; Related Service *Supervisors;* Related Service Personnel; *Principals* of Special Day Schools for Handicapped; and Teachers.

(2) Estimated Number of Type—Administrators, 100; Supervisors, 350; Personnel, 2,800; Principals, 225; and Teachers, 1,100.

(3) Estimated Average Person-Hours Respondent Time per Type of Respondents—Administrators, 2½ hours for Special Education Administrators and ¾ of an hour for Others; Supervisors, ¾ of an hour; Personnel, ¼ of an hour; Principals, ½ of an hour; Teachers, ⅓ of an hour; Clerical, 4 hours.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

Total cost to respondents is estimated at $21,237 and total person-hours is estimated at 1,603 professional hours @ $12.50 per hour and 200 clerical hours @ $6 per hour.

(l) Estimated costs to the Federal Agency to Collect, Process, and Analyze the Data

$400,000.

(m) A List of the Specific Data To Be Collected From Each Type of Respondent

Type of Respondent and Type of Data To Be Collected

(1) Special Education Administrators, District Administrators, and Directors of Other Agencies.
- Description of services (personnel and student data).
- Limitation on medical services.
- Nature and adequacy of cooperative and interagency arrangements.
- Description of diagnostic and IEP processes.
- Experience and qualification of teachers.

(2) Related Services Supervisors.
- Description of services (organizational structure and number of personnel).
- Limitation on medical services (selected supervisors only).
- Description of Diagnostic and IEP procedures.
- Adequacy of interagency agreements.

(3) Related Services Personnel.
- Allocation of time by Age, Handicap, Placement and Services.
- Experience and training.
- Treatment group sizes; frequency, duration and length of sessions.

(4) Principals of Special Day Schools for Handicapped.
- Personnel and Services in day schools.

(5) Teachers.
- Allocation of time among activities.
- Individual student requirements (functional levels) and services.

(n) Name and Address of Individual or Office From Which a Copy of the Data Instrument(s) May Be Obtained

Kathleen Fenton, Bureau of Education for the Handicapped (DID/SPSB), 400 Maryland Avenue SW., Washington, D.C. 20202.

Note.—A waiver is being requested.

Description of a Proposed Collection of Information and Date Acquisition Activity

(a) Title of Proposed Activity

State-Administered Program Application for Gifted and Talented Program.

(b) Agency/Bureau/Office

Bureau of Education for the Handicapped/Office of Gifted and Talented.

(c) Agency Form Number

OE Form 717.

(d) Legislative Authority for This Activity

"The Commissioner shall make grants to State educational agencies for the Federal share of the cost of planning, developing, operating, and improving programs designed to meet the educational needs of gifted and talented children at the preschool, elementary, and secondary levels. (Pub. L. 95–561, Title IX, Part A, Section 904; 20 U.S.C. 3314.)

(e) Concise Description of the Proposed Activity

The State Education Agency application will contain its plan to distribute 90% of its Federal award to Local Education Agencies through a competitive grant process. The State Education Agency plan consists of its method to meet the assurances stipulated by Pub. L. 95–561, Title IX, Part A, section 904. The financial assistance to State and Local Education Agencies is to support the planning, developing, operating and improving programs designed to meet the special educational needs of gifted and talented children.

(f) Voluntary/Obligatory Nature of Response

Required to obtain or maintain benefits.

(g) Justification of How Information Collected Will Be Used

Program Management.—Information collected will be used to assure compliance with Pub. L. 95–561, Title IX, Part A, Section 904 so that grants may be awarded under the State-Administered Program of the Gifted and talented Children's Education Program.The information collected through the application process is necessary to assure the funding of appropriate State Education Agency Programs.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.

(2) Time of Collection: January 25, 1980.

(3) Frequency: Annual.

(4) Method of Analysis: Applications will be reviewed by the staff of the Office of Gifted and Talented as well as by a panel of technical reviewers.

(i) Timetable for Dissemination of the Collected Data

Applicants will be notified of grant award decisions by April, 1980.

(j) Respondents

(1) Type: State Education Agency administrators.

(2) Estimated number by type: SEAs–57.

(3) Estimated Average person-hours respondent time per type of respondent: SEA–30 hours.

(k) Estimated Costs and Person-Hours to the Respondent (Total)

(1) Cost—$13,680.

(2) Person-hours—1,710.

(l) Cost to the Federal Agency

$9,000.

(m) A List of the Specific Data To Be Collected From Each Type of Respondent

The application package required for the State-Administered Program contains the following requirements:

(1) Budget Summary for minimum grant request and, at the discretion of the applicant, a budget summary for competitive grant request.

(2) Program Narrative:

Minium-Grant Request.—The minimum-grant request should contain a plan for the State Education Agency to distribute 90% of its Federal award to Local Education Agencies through a competitive grant process which supports programs and projects for gifted and talented children. This plan should describe criteria for awarding not less than 50% of the funds awarded to the SEA for LEA projects that include a component for identifying and serving the educational needs of gifted and talented children from low-income families. Up to 10% of the funds awarded to the SEA may be used for administration, technical assistance, coordination and statewide planning related to these programs.

Competitive-Grant Request.—Funds are available for 20–30 SEAs to compete for grants of $60,000 to $90,000 each. The competitive-grant request for funds in addition to the minimum-grant award should be made in the second section of the State-Administered Program application. This portion of the application will be reviewed on the basis of the following criteria: (a) A comprehensive approach to identify and meet the educational needs of gifted and talented children, (b) planning to involve persons and organizations in both the public and private sectors, (c) a plan for technical assistance by the SEA to LEAs to assist in preparing proposals, planning, developing and operating LEA projects. This technical assistance is to be given to LEAs which are otherwise unable to compete for grants because of smaller size or lack of financial resource, (d) administration and plan for the SEA to distribute 90% of its Federal award to LEAs through a competitive grant process, (e) a plan to award subgrants to LEAs for projects to identify and meet the educational needs of disadvantaged gifted and talented children from low income families, (f) coordination of a plan to monitor LEA projects and to disseminate the results of these projects.

(n) Name and Address of Individual/Office From Which a Copy of the Data Instrument(s) May Be Obtained

Martha B. Bokee, Office of Gifted and Talented, Bureau of Education for the Handicapped, 400 Maryland Avenue, SW., Room 3530, Donohoe Building, Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Application for Federal assistance for the Biomedical Sciences Program.

(b) Agency/Bureau/Office

Office of Education/Bureau of School Improvement/Biomedical Sciences.

(c) Agency Form Number

OE #732.

(d) Legislative Authority for the Activity

Title III, Part L, Section 383(a) of the Education Amendments of 1978 states "The Commissioner is authorized to make grants to or enter into contracts with institutions of higher education for the purpose of offering projects to educate, motivate, and encourage students from an economically disadvantaged background to pursue training at the undergraduate and graduate levels in the biomedical sciences." (Pub. L. 95–561) (20 U.S.C. 3051–57)

(e) Concise Description of the Proposed Activity

Section 385(a) of the statute requires that any institution of higher education

wishing to apply for a grant for a project must meet the provisions of the statute. Applicants must explain the nature of and procedures for carrying out program components required by the statute. To administer the program, the Office of Education must collect such information from applicants and apply criteria listed in the Education Division General Administrative Regulations (EDGAR) and those listed in the Biomedical Sciences Program regulations in order to select those projects best able to carry out program purposes. The Biomedical Sciences Program provides grants to institutions of higher education for the purpose of educating and motivating talented, economically disadvantaged secondary school students to prepare them for entry into postsecondary schools leading to careers in the biomedical sciences.

(f) Voluntary/Obligatory Nature of Response

Required to obtain or maintain benefits.

(g) Justification of How Information Collected Will Be Used

Information received will be used to select Biomedical Science Program projects for funding. The information will be judged on the basis of criteria required by §§ 100a.200–100a.206 of EDGAR and by §§ 1611.41–1611.43 of the proposed regulations for the Biomedical Sciences Program. Persons involved in the selection process will be Office of Education staff members and outside field readers. After projects have been selected, Office of Education staff members will use the information for compliance enforcement and assessment of program effectiveness during onsite monitoring visits.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.

(2) Time of Collection: Spring 1980.

(3) Frequency: Annually.

(i) Timetable for the Dissemination of the Collected Data

Not applicable.

(j) Respondents

(1) Type: Colleges and Universities.

(2) Estimated Number by Type: 100.

(3) Estimated Average Person-Hours Response Time Per Type of Respondent: 40.

(k) Estimated Costs and Person-Hours to the Respondent (Total)

Total estimated costs are $48,000. Total estimated person-hours are 4,000.

(l) Estimated Costs to the Federal Agency To Collect, Process and Analyze the Data

The estimated total costs to the Office of Education are $36,000.

(m) A List of the Specific Data To Be Collected From Each Type of Respondent

Following is a list of categories of specific data to be collected from each respondent, as required by §§ 100a.200–100a.206 of EDGAR and §§ 1611.41–1611.43 of the Biomedical Sciences Program regulations:

Plan of operation.

Quality of key personnel.

Budget and cost effectiveness.

Evaluation plan.

Adequacy of resources.

Training of personnel involved in or related to projects in the biomedical sciences.

Cooperation among institutions, agencies, and organizations.

Quality of dissemination.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument May Be Obtained

Office of Biomedical Sciences Program, Melvin E. Engelhardt, Bureau of School Improvement, U.S. Office of Education, 400 Maryland Avenue, SW, Room 3700, Donohoe Building, Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Letters of Request to Collect Information for the Development of a Catalog of Modifications and Adaptions of Vocational Education Equipment for Serving the Handicapped.

(b) Agency/Bureau Office

Office of Education, Bureau of Occupational and Adult Education.

(c) Agency Form Number

OE Form 735.

(d) Legislative Authority for the Activity

"Section 171(a). Funds reserved to the Commissioner * * * shall be used * * * for contracts * * * for—(1) activities authorized by sections 131 (applied research and development in vocational education) * * *" (Pub. L. 94–482, Title II, Section 202; 20 U.S.C. 2401).

(e) Concise Description of the Proposed Activity

Staff will send letters of request to persons likely to (a) know about specific modifications in tools, equipment and machinery which have been found effective in training handicapped persons or in helping them obtain and remain in employment of (b) know where (or from whom) such information could be obtained. Each respondent will be asked to provide whatever information he or she can about either "a" or "b" above.

(f) Voluntary/Obligatory Nature or Response

Voluntary.

(g) Justification of How Information Collected Will Be Used

This information will be screened, categorized and edited to fit a clear and useful format. It will then be compiled into a catalog.

(h) Data Acquisition Plan

(1) Method of collection: Letter survey/phone contact followup as required.

(2) Time of collection: Winter 1979–80.

(3) Frequency: Single time.

(4) Method(s) of analysis: The responses will be screened by a panel of experts to determine the suitability of including the equipment in the Catalog.

(i) Timetable for Dissemination of the Collected Data

Printing of copies to be used at six regional dissemination workshop is to be completed by September 1, 1980. The six dissemination workshops are scheduled for September and October of 1980.

(j) Respondents

(1) Type: Educators, employers, and other professionals and advocates involved with handicapped persons.

(2) Estimated number by type:

Consultants in State Education Agencies (SEA's)—57.
Chief, Facilities Section, SEA's—57.
Directors of Post-secondary Institutes—150.
State Directors of Vocational Rehabilitation—57.
Presidents of State Vocational Associations for Special Needs Students—57.
State Directors of Special Education—57.
Teacher Educators of the Handicapped—105.
State Rehabilitation Association Presidents—57.

(3) Estimated average person-hours respondent time per type of respondent: .50 hours for each type.

(k) Estimated Costs and Person-hours to the respondents (Total)

275 hours; $2,750.00

(l) Estimated Costs to the Federal Agency To Collect, Process, and Analyze the Data (Contract, S&E)

Contract costs are $221,000; S&E costs are $3,500.

(m) A List of the Specific Data To Be Collected, From Each Type of Respondent

(1) Description of equipment or tool modification.
(2) Cost (estimated).
(3) Feasability.
(4) Site where adaption or modified equipment is located, and/or may be obtained.
(5) Instruction material, if any.

(n) Name and Address of the Individual or Office, From Which Copies of the Data Instrument(s) May Be Obtained

Frank L. Perazzoli, Education Program Officer, Bureau of Occupational and Adult Education, U.S. Office of Education, Room 5640, ROB#3, 400 Maryland Ave. SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Standard Format for State Plans under Title VII A of the Higher Education Act of 1965, as amended.

(b) Agency/Bureau/Office

DHEW/OE/Bureau of Higher and Continuing Education/Division of Training and Facilities/Academic Facilities Branch.

(c) Agency Form Number

OE Form 738.

(d) Legislative Authority for This Activity

In accordance with Section 704 of Title VII: "Any State desiring to participate in the grant program authorized by this part for any fiscal year shall submit for that year to the Commissioner through the State Commission a State plan for such participation. Such plan shall be submitted at such time, in such manner, and containing such information as may be necessary to enable the Commissioner to carry out his functions * * *"

Section 170.17 of the Rules and Regulations governing the Title VII program provides that: "A new or revised State plan submitted in accordance with Section 704 of the Act shall be submitted on forms or in a format supplied by the Commissioner and shall contain all provisions required by the Commissioner pursuant to Section 704 of the Act and other sections of the regulations in this part, together with such additional organizational and administrative information as the Commissioner may request."

(e) Concise Description of the Proposed Activity

State plans are submitted to the Commissioner so that the Commissioner can determine that the plans are consistent with the specific statutory provisions for making grant awards under Title VII A.

(f) Voluntary/Obligatory Nature of Response

Any State desiring to participate in the grant program must submit a State plan for approval by the Commissioner.

(g) Justification of How Information Collected Will Be Used

The Commissioner approves a State plan after receiving satisfactory assurance and explanation regarding the basis on which the State Commission submitting the plan meets the statutory requirements for participating in the grant program.

(h) Data Acquisition Plan

a. Method of collection: Mail.
b. Time of collection: No later than 60 days prior to the first closing date set out in the State plan.
c. Frequency: Each fiscal year that a State desires to participate in the Title VII A program.
d. Method of analysis: The Commissioner reviews the assurance and explanations as a basis for approving the State plans.

(i) Timetable for Dissemination of the Collected Data

Not applicable.

(j) Respondents

a. Type: State commissions.
b. Estimated number by type: 56.
c. Estimated average person-hours respondent time per type of respondent: 2.0.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

112 person hours @ $1,680.

(l) Estimated Cost to the Federal Agency To Collect, Process, and Analyze the Data

$3,300.

(m) A List of the Specific Data To Be Collected From Each Type of Respondent

Information relating to (1) the identification of the State, (2) the legal name and official address of the State Commission, (3) the titles of the principal officers of the State Commission, (4) the staff and administrative services to the State Commission, (5) the formal provisions for consultations with advisory groups or other agencies in the State, (6) the rules of procedure which the State Commission has adopted for conducting its business and reaching official decisions regarding applications submitted under Title VII A, (7) the closing dates, (8) the procedures for determining the relative priorities of projects, (9) the procedures for determining the Federal share of projects, (10) the procedures for affording an applicant a fair hearing before the State Commission as to any determination of the State Commission adversely affecting such applicant, (11) the number of days within which an applicant may request such a hearing, (12) the legal title and official address of the officer, who has legal authority to receive and provide for the custody of Federal funds, (13) the officer(s) in the State who will requisition and approve the expenditure of any federal funds for expenses of the State Commission, (14) the officer(s) in the State who will certify the payment of any Federal funds for expenses by the State Commission, (15) the separate special account or fund for the Federal funds received by the State for expenses of the State Commission, (16) the accounts and documents supporting expenditures for expenses of the State Commission, (17) the name and address of the agency that will maintain the accounts and documents described above in item (16), (18) the State law or regulation with regard to allocation of expenditures to fiscal year periods where outstanding obligations or encumbrances carry from one fiscal year to another (including, where applicable, definitions, under State practice, of the term "obligation", "encumbrance", "expenditure", and "disbursement"), (19) the extent and frequency of State audits of expenditures by the State agency under the approved State plan, including expenditures of Federal funds, and the responsibility for corrective action regarding exceptions by State auditors, (20) the methods used in determining the costs chargeable to preparation or administration of the State plan, if the expenses of the State Commission in administration of the State plan are mixed with expenses for activities not involved in administration of the State plan, and (21) the name and title of the Chief Officer of the State Commission,

certifying that State plan has been adopted.

(n) Name and Address of Individual or Office From Which a Copy of the Data Instrument May Be Obtained

Thomas F. McAnallen, Chief, Academic Facilities Branch, Division of Training and Facilities, OE/BHCE, 400 Maryland Avenue SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Guarantee Agency Quarterly Report.

(b) Agency/Bureau/Office

U.S. Office of Education/Bureau of Student Financial Assistance/Division of Policy and Program Development.

(c) Agency Form Number

OE 1130.

(d) Legislative Authority for the Activity

The Guarantee Agreements entered into by the Commissioner and the Guarantee Agency shall—"Provide for mailing such reports, in such form and containing such information, as the Commissioner may require to carry out his functions under this subsection, and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports * * *" (20 U.S.C. 1078(c)(2)(B) Pub. L. 89-329 Title IV Sec. 428).

"The Agency shall submit reports to the Commissioner upon request concerning the status of the reserve fund and the operation of its loan insurance program" (Sec. 177.408(b)(1)).

(e) Concise Description of Proposed Activity

There are two parts to the Guaranteed Student Loan Program (GSLP): Guarantee Agency Program and the Federal Insured Loan Program. State Agency's loans are reimbursed by the Commissioner for part or all of the insurance claims they pay to lenders. The Commissioner pays 80% of a Guarantee Agency's default losses under a reinsurance agreement. If the agency meets additional requirements, the Commissioner pays up to 100% of the agency's default losses, depending upon its default experience. Federal advances are also available to help start or strengthen an agency's reserve fund which backs its loan guarantees. Additional Federal advances are available to help pay insurance claims. Administrative Cost Allowances are also available to the agencies.

Since the Federal Government is subsidizing the guarantee agency programs, the Commissioner is mandated by law to monitor closely the operations of the State programs for compliance with Federal law. Further, the agreements entered into by the Commissioner and the agencies provides that the agency shall submit reports to the Commissioner concerning its reserve fund and the operation of its loan insurance program. This report collects information on the status of the reserve fund and the operations of the program. The Office of Education analyzes these reports to detemine if the agency's operations, i.e. default claims, reserve ratios, etc. is at an acceptable level. If it is not, remedial action is necessary to correct the deficiency.

(f) Voluntary/Obligatory Nature of Response

Required to obtain benefits.

(g) Justification of How Information Collected will Be Used

Program Management: To determine if the program operation of the agency is in compliance with Federal law; accountability to the Office of Education for funds expended by the agency.

Evaluation: The information collected is analyzed to evaluate the effectiveness of the program with regard to claims paid, default rate, and collection activity. If the default rate approaches 10%, the Office of Education contacts the agency to assist the agency in pre-claims assistance and other preventive measures to bring the program under control.

(h) Data Acquisitions Plan

1. Method of Collection: Mail.
2. Time of Collection: Throughout Fiscal Year 1980.
3. Frequency: Quarterly.

(i) Timetable for Dissemination of Collected Data

N/A.

(j) Respondents

1. Type: Guarantee Agencies.
2. Estimated Number: 53.
3. Estimated Average Person-Hours Response Time Per Respondent: Two hours and fifteen minutes.

(k) Estimated Cost and Person Hours to Respondent (Total)

1. Total Person-Hours: 2.25 Dollar Cost of $22.50

(l) Total Cost to OE: $16,100

(m) Essential Characteristics of Date To Be Reported

1. Status of Reserve Funds.
a. Status of Advance Funds and Other Federal Payments.
b. Funds Available to Meet Potential Defaults; and
c. Financial Condition of the Agency at End of Reporting Period.
2. Outstanding Loans.
a. Dollar Volume of Loans by Category.
b. Original Principal of Outstanding Loans.
c. Original Principal of Matured Paper; and
d. Calculated Reserve Ratio.
3. Program Operations.
The purpose of this part is to provide summary data on certain agency operations.
4. Claims, Collections, and Ratios.
a. To Provide Current Status of Agency's Collections Activity,
b. Consistently Calculated Ratios to Make Inter-Agency Comparisons, and;
c. Raw Data for the Management Information System of the Office of Education.
5. Request for Payment of Administrative Cost Allowance (ACA).
The purpose of this part is to provide the Office of Education with the information necessary to calculate and to process ACA payments.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) May Be Obtained

Horace E. Cocroft, Chief, Guarantee Agency Section, State Program Branch, Division of Policy and Program Development, Bureau of Student Financial Assistance, Office of Education, 7th and D Streets, SW. Rm. 4013 ROB, Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Certificate of Project Costs.

(b) Agency/Bureau/Office

DHEW/OE/Bureau of Higher and Continuing Education, Division of Training and Facilities, Academic Facilities Branch.

(c) Agency Form Number

OE Form 1143.

(d) Legislative Authority for This Activity

"The term 'development cost,' * * * means the amount found by the

Commissioner to be the cost, to the applicant for a grant or loan under this title, of the construction, reconstruction, or renovation involved." (Section 782(3)(A) of Title VII of the Higher Education Act of 1965, as amended).

"No equipment shall be considered as initial equipment unless it has been acquired or contracted for prior to the date on which the facility is first used for education of students." (Section 170.1, Part 170 of Title 45 of the Code of Federal Regulations).

"For a project for which an application is filed for the first time under any program of the Act on or after July 1, 1972, the following shall be excluded from the eligible development cost:

(1) Any cost for the acquisition of land which was incurred more than 2 years prior to the date an application is filed;

(2) Any cost for the acquisition of an existing structure incurred more than 1 year prior to the date an application is filed;

(3) Any cost for initial equipment incurred before the date an application is filed; or

(4) Any cost for construction (including new construction, remodeling, rehabilitation, or conversion) or for built-in equipment where the contract has been entered into prior to the date an application is filed and prior to the concurrence of the Commissioner in the award of the contract."

(Section 170.6(b), Part 170 of Title 45 of the Code of Federal Regulations).

(e) Concise Description of the Proposed Activity

To gather information sufficient to determine the eligibility of costs incurred on projects funded under Title VII.

(f) Voluntary/Obligatory Nature of Response

The use of the form is obligatory. If an institution fails to respond, the full amount of the grant may not be earned, since the Office of Education may not be able to determine the eligibility of costs incurred.

(g) Justification of How Information Collected Will Be Used

The Information collected will enable the Office of Education to determine if institutions are meeting the statutory and regulatory requirements relating to project costs.

(h) Data Acquisition Plan

1. Method of Collection: Mail.

2. Time of Collection: At the time of project close-out, after the reconstruction or renovation has been completed.

3. Frequency: Once, in connection with the close-out of a project.

4. Method of Analysis: The Office of Education reviews each form for a determination of cost eligibility.

(i) Timetable for Dissemination of the Collected Data

Not applicable, since the data is collected as projects are completed.

(j) Respondents

1. Type: Institutions of higher education.

2. Estimated Number by Type: 300.

3. Estimated Average Person-Hours Respondent Time Per Type of Respondent: 1.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

$2,700; 300 person-hours.

(l) Estimated Costs to the Federal Agency to Collect, Process, and Analyze the Data

$4,500.

(m) A List of the Specific Data to be Collected From Each Type of Respondent

Information relating to (1) the project number, (2) name and address of grantee, (3) project description, (4) the facilities cost, (5) reimbursable sales taxes, and (6) certification as to the correctness of the statements.

(n) Name and Address of Individual or Office From Which a Copy of the Data Instrument May be Obtained

Thomas F. McAnallen, Chief, Academic Facilities Branch, Division of Training and Facilities, OE/BHCE, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Certification as to use of Federally assisted Facilities under Title VII, HEA.

(b) Agency/Bureau/Office

DHEW/OE/Bureau of Higher and Continuing Education, Division of Training and Facilities, Academic Facilities Branch.

(c) Agency Form Number

OE Form 1308.

(d) Legislative Authority for this Activity

Section 781(b) of Title VII of the Higher Education Act of 1965, as amended, provides for a twenty year period of Federal interest in facilities constructed with Title VII assistance. During this time, the Federally supported space must be used for eligible academic purposes as defined in the Act. (20 U.S.C. 1132e) Pub. L. 92-318.

(e) Concise Description of the Proposed Activity

To gather information sufficient to determine that institutions are meeting the statutory space utilization requirements.

(f) Voluntary/Obligatory Nature of Response

The use of the form is voluntary. However, if an institution fails to respond, the Office of Education, in order to meet its obligation in administering the Title VII program, would need to obtain the information in some other manner, such as through an on-site visit.

(g) Justification of How Information Collected Will Be Used

The information collected will enable the Office of Education to determine whether or not an institution is meeting its facilities space utilization requirements as provided for by statute.

(h) Data Acquisition Plan

a. Method of Collection: Mail.

b. Time of Collection: On a selective basis, as determined by the Office of Education.

c. Frequency: At least once every five years, but no more often than once every year.

d. Method of Analysis: The Office of Education reviews each form and determines if further action is required.

(i) Timetable for Dissemination of the Collected Data

There is no timetable for the dissemination of the collected data.

(j) Respondents

a. Type: Institutions of higher education.

b. Estimated Number by Type: 1,800.

c. Estimated Average Person-Hours Respondent Time Per Type of Respondent: .5.

(K) Estimated Costs and Person-Hours to the Respondents (Total)

180 person-hours @ $1,800.

(l) Estimated Costs to the Federal Agency To Collect, Process, and Analyze the Data

$1,200.

(m) A List of the Specific Data To Be Collected from Each Type of Respondent

Information collected relates to: (1) The name of the institution, (2) the project number(s), (3) description of the facilities, (4) the utilization of the facilities, (5) the maintenance of the facilities, (6) the equipment in the facilities, (7) insurance coverage, and (8) certification as to the correctness of the statements.

(n) Name and Address of Individual or Office From Which a Copy of the Data Instrument May Be Obtained

Thomas F. McAnallen, Chief, Academic Facilities Branch, Division of Training and Facilities, OE/BHCE, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information and Data Acquisition Activity

(a) Title of Proposed Activity

Application for Commissioner's Discretionary Programs of Bilingual Education (Title VII, ESEA) (Non-Competing).

(b) Agency/Bureau/Office

U.S. Office of Education, Office of Bilingual Education.

(c) Agency Form Number

OE Form 4561.

(d) Legislative Authority for This Activity

Section 721(a).—"Funds available for this grant shall be used for—

(1) The establishment, operation and improvement of programs of bilingual education * * *;

(2) Auxiliary and supplementary, community and educational activities * * *;

(3)(A) The establishment, operation and improvement of training programs * * * and (B) Auxiliary and supplementary training programs * * *

(4) Planning, and providing technical assistance for, and taking other steps leading to the development of, such programs."

Section 721(b)(1).—"A grant may be made under this section only upon application * * * by one or more local educational agencies or by an institution of higher education, including a junior or community college, applying jointly with one or more local educational agencies * * * Each such application shall be made to the Commissioner at such time, in such manner, and containing such information as the Commissioner deems necessary * * *"

Section 721(b)(5)(A).—"Upon an application from a State educational agency, the Commissioner shall make provision for the submission and approval of a State program for the coordination * * * of technical assistance to programs * * * in such state * * *" (20 U.S.C. 3231) Pub. L. 95-561.

Section 723(a)(1).—"In carrying out the provisions * * * of section 721, with respect to training, the Commissioner shall, through grants to, and contracts with, eligible applicants, * * * provide for—

(A)(i) training * * * designed (I) to prepare personnel * * * (II) to train teachers, administrators, counselors, paraprofessionals, teacher aides, and parents * * * and (III) to train persons to teach and counsel such persons * * *

(A)(ii) special training programs * * * the operation of short-term training institutes * * *

Section 723(a)(2).—"In addition, the Commissioner is authorized to award fellowships * * *" (20 U.S.C. 3233) Pub. L. 95-561.

(e) Concise Description of the Proposed Activity

Application for non-competing continuation awards for bilingual education programs.

(f) Voluntary/Obligatory Nature of Response

Required to obtain or maintain benefits.

(g) Justification of How Information Collected Will Be Used

The Office of Bilingual Education will review the continuation applications to determine that the applicant—

(1) Is eligible for continued assistance;

(2) Is making satisfactory progress toward achievement of program objectives as stated in original application and award;

(3) Is striving to institutionalize federally funded activities;

(4) Has submitted budget data and requests that support the objectives of the project.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.

(2) Time of Collection: Winter.

(3) Frequency: Annually.

(i) Timetable for Dissemination of the Collected Data

Not Applicable.

(j) Respondents

(1) Type: Colleges and Universities.

(2) Estimated Number: 90.

(3) Estimated Average Person—Hours Response Time per Respondent: 20.

(1) Type: Local Educational Agencies.

(2) Estimated Number: 420.

(3) Estimated Average Person—Hours Response Time per Respondent: 20.

(1) Type: Non profit Organizations.

(2) Estimated Number: 10.

(3) Estimated Average Person—Hours Response Time per Respondent: 20.

(k) Estimated Costs and Person—Hours to The Respondents (Total)

10,400 person—hours; $120,000.

(l) Estimated Costs to the Federal Agency to Collect, Process and Analyze the Data (Contract, S & E)

Contract: $ 0.

S & E: $45,500.

(m) A List of the Specific Data to be Collected From Each Type of Respondent

From all respondents:

Budget Information.

(Budget summary of estimated funds for each activity for the first budget year for the following object class categories: personnel; fringe benefits; travel; equipment; supplies; contractual; construction; indirect charges; program income).

Forecasted cash needs for the first time.

Budget estimate of federal funds needed for succeeding years.

From all Training and Fellowship projects: Budget information for tuitions and stipends.

From all Basic and Desegregation grants: Supplementary Questionnaire—enrollment data.

From joint applicants: Certification signatures and information.

(n) Name and Address of Individual or Office From Which a Copy of the Full Plan and the Data Instrument(s) May Be Obtained

Mr. Charles E. Hansen, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Description of a Proposed Collection of Information And Data Acquisition Activity

(a) Title of Proposed Activity

FY-1980 Financial/Performance Report for Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142 and Pub. L. 89-313.

(b) Agency/Bureau/Office

U.S. Office of Eduaction/Bureau of Educaton for the Handicapped/Division of Assistance to States.

(c) Agency Form Number

OE 9093.

(d) Legislative Authority for This Activity

(1) "* * * each State agency shall report outlays and program income on the same accounting basis * * * the report will not be required more frequently than quarterly or less frequently than annually * * *" (45 CFR 100b.43).

(2) "* * * State agencies shall submit a performance report with each Financial Status Report (or other financial report equivalent thereto) * * *" (45 CFR 100b.432).

(3) "* * * Not later than one hundred twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committee of each House of Congress a report on the progress being make toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted * * *" Pub. L. 94–142 Section 618(d).

(e) Description of the Proposed Activity

Program Management: This report basically provides accountability for funds generated by the SEA's application for participation in the grant program under Part B of the Education of the Handicapped Act, as amended by Pub. L 94–142 and Pub. L. 89–313. Performance data provides an indication of program effectiveness. The performance data also becomes an integral part of the Bureau's annual report to Congress on the general condition of special education. These reports are required in the Act. Interim financial and performance report will be submitted for 1980 funds and final reports will be submitted for FY–1980 funds. (Pub. L. 94–142, Section 618)

(f) Voluntary/Obligatory Nature of Response

Required to obtain or maintain benefits.

(g) Justification of how Information Collected Will be Used

Information will be used to verify that grantees are meeting the requirements set forth for these programs in statute and implementing regulations. Actual data is required which corresponds to projections set out (or to replace tablets that appeared previously) in State's Annual Program Plans. The data collected also is required by statute so that an annual report can be compiled for Congress for the purpose of describing the progress being made toward the provision of a free appropriate public education. This report is, in part, a compilation and analysis of the data collected from each program applicant.

(h) Data Acquisition Plan

(1) Method of Collection: Mail.
(2) Time of Collection: January 1981.
(3) Frequency: Annual.
(4) Method of Analysis: Data will be compiled and tabulated by computer and then reviewed and analyzed by education program specialists.

(i) Timetable for Dissemination of Collected Data

January, 1982.

(j) Respondents

(1) Type: State education agencies.
(2) Number: 58.
(3) Estimated Average Person-Hours Per Respondent: 8 hours.

(k) Estimated Costs and Person-Hours to the Respondents (Total)

(1) Cost: $5,600.
(2) Person Hours: 464.

(l) Estimated Cost to the Federal Agency to Collect, Process and Analyze the Data

$5000.

(m) List of the Specific Data to be Collected

Pub. L. 94–142 Financial Section. Each State will be asked to report by 4 categories (SEA Administrative expenditures, SEA direct services, SEA support services, Flow-through) the Federal share of program outlays, the Federal share of unpaid obligations, as well as the unobligated balance of Federal funds, if applicable. For Federal funds used for SEA administrative expenditures, a report must also be submitted for the total Federal funds authorized and the unobligated balance of Federal dollars.

Pub. L. 89–313 Financial Section. Each State reports by 11 categories of handicapping conditions the Federal share of program outlays, the Federal share of unpaid obligations, as well as the unobligated balance of Federal funds.

Pub. L. 94–142 Performance Section. Table 1 requires States to report by 11 handicapping conditions (for children 0–21) the number of children identified, evaluated and placed in special education in the State in the 1979–1980 school year. Data is also required on the number of handicapped children educated in private and public institutions and the number of State administrative staff paid with Part B funds.

Table 2 requires the States to specify the number of handicapped children receiving an education which meets all educational needs, broken out by 11 handicapping conditions in 3 age ranges (3–5, 6–17, 18–21). On this table, States are also required to report the number of handicapped children (18–21 years of age) not receiving an education or needing additional services broken down into 11 disability categories.

Table 3 requires a report of handicapped children served in placements in the continuum of educational placements broken out in 11 disability categories by 3 age categories. Only the total number of children served is required for the age range 0–2.

Table 4 requires a report of personnel employed in the 1979–1980 school year broken out according to their profession (e.g., psychologists, speech pathologists, etc.) by 11 disability conditions which describe the children they work with.

Table 5 requires States to report the number of persons who received inservice training in the 1979–1980 school year in four types (awareness, knowledge, skill practice and skill application) of training areas by eight categories of training audiences (regular classroom teachers, special education teachers, teacher aides, parents, support personnel, administrators, operations personnel, other).

In addition, States are asked to describe 10 major accomplishments achieved in implementing the policy on priorities (including the funds used), a description of 10 accomplishments in the area of child identification, and data on the number and status of due process hearings.

Pub. L. 89–313 Performance Section. Reporting is required on the number of children that participate in the program by the 11 handicapping conditions across 4 age groupings: 0–2, 3–5, 6–17, and 18–20. States are also required to report on the *number of personnel* paid from project funds and the number of personnel receiving inservice training from project funds. In addition, States must account for funds by project by describing: (1) The number of children that participated by 11 disability categories and (2) the number of personnel paid from project funds and the number of personnel paid from other funds by the 11 disability categories.

(n) Name and Address of Individual or Office From Which a Copy of the Data Instrument(s) may be Obtained

William Tyrrell, Bureau of Education for the Handicapped, Room 4920, Donohue Building, 400 Maryland

Avenue SW., Washington, D.C. 20202, (202) 245-9405.

[FR Doc. 79-36851 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-89-M

Office of Education

National Advisory Council on the Education of Disadvantaged Children, Meeting Addendum

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, section 10(a)(2), notice is hereby given that the meeting of the National Advisory Council on the Education of Disadvantaged Children on December 6 and 7, 1979, which was announced in the Federal Register of Tuesday, November 20, 1979 on Page *66693* will be held in the John Hay Room at the Hay Adams Hotel, 800-16th Street, N.W., Washington, D.C.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2852) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C. on November 27, 1979.

Gloria B. Stickland,

Acting Executive Director.

[FR Doc. 79-36864 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Human Development Services

Rehabilitation Long-Term Training; Program Announcement No. 13629-801

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Fiscal Year 1980 Grant Funds for Rehabilitation Long-Term Training.

SUMMARY: The Rehabilitation Services Administration, Office of Human Development Services, announces that applications will be accepted from State vocational rehabilitation agencies and other public or nonprofit agencies and organizations, including institutions of higher education, wishing to compete for grants in Fiscal Year 1980 under the Rehabilitation Long-Term Training Grant Program authorized by Section 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762). Regulations governing the rehabilitation long-term training grant program were published in the Federal Register in Subpart A and Subpart E, Part 1362 of Chapter XIII of Title 45 of the *Code of Federal Regulations* in 45 CFR Part 1362 on November 25, 1975.

DATES: The closing date for receipt of new and competing continuation long-term training applications in the areas of *Rehabilitation Medicine, Rehabilitation Counseling, Prosthetics and Orthotics,* and *Rehabilitation Continuing Education* is: February 1, 1980.

The closing date for receipt of new and competing continuation applications in the areas of *Rehabilitation Facility Administration, Vocational Evaluation and Work Adjustment, Rehabilitation Nursing, Rehabilitation Social Work, Rehabilitation Psychiatry, Rehabilitation Psychology, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology, Rehabilitation of the Blind, Rehabilitation of the Deaf, Rehabilitation Job Placement and Job Development, Therapeutic Recreation, Rehabilitation of the Mentally Ill, Undergraduate Education for the Rehabilitation Services, and Other Long-Term Training* Areas is: February 29, 1980.

Scope of this Program Announcement

This Program Announcement identifies the general program objectives of the Rehabilitation Long-Term Training Program for Fiscal Year 1980.

Program Purpose

Rehabilitation long-term training grants are made for the support of projects designed for training personnel available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely disabled.

Program Goals and Objectives

Grants are made to provide a balanced program of assistance to meet the medical, vocational and other personnel training needs of both public and private rehabilitation programs and institutions. This balanced program of training assistance includes training in the fields of rehabilitation medicine, rehabilitation counseling, rehabilitation social work, rehabilitation psychiatry, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, workshop and facility administration, prosthetics and orthotics, specialized personnel in providing services to deaf and blind individuals, rehabilitation job placement and job development, therapeutic recreation, and other fields contributing to the rehabilitation of handicapped individuals including homebound and institutionalized individuals.

Rehabilitation long-term training grants are intended:

1. To increase the supply of personnel available for employment in public and private rehabilitation agencies involved in the rehabilitation of severely physically and mentally handicapped individuals;

2. To improve the quality of professional practice in service to physically and mentally handicapped individuals, with special emphasis on those who are the most severely handicapped; and

3. To ensure the maintenance of basic skills and knowledge of personnel engaged in programs serving handicapped individuals and simultaneously provide opportunities for such individuals to raise their level of competence and broaden their expertise as providers of vocational, medical, social and psychological rehabilitation services and as advocates for the rights of severely handicapped individuals.

Eligible Applicants

Applications may be submitted by State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

Available Funds

An estimated $22 million will be available for rehabilitation long-term training grants during the 1979-1980 academic year beginning July 1, 1980. This is a reduction from the Fiscal Year 1979 level and it is expected that very few new projects will be initiated. Of the approximately 375 rehabilitation long-term training projects funded during the 1979-1980 academic year, 110 new and competing continuation applications were approved and funded. The size of the individual grants is variable and in the 1979-1980 academic year ranged widely from approximately $7,500 to approximately $250,000.

Grantee Share of the Project

It is expected that grantees will provide some of the total project costs. Grantee contributions must be project-related and allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q. Institutions of higher learning and other nonprofit institutions may consider actual indirect costs in excess of the 8 percent limit allowed on training grants as part of the grantee contribution to the project. Insofar as possible, the applicant's share of teaching costs in multi-year applications for academic training projects is expected to increase

progressively in each succeeding year so that the personnel costs are fully absorbed by the end of the approved project period.

The Application Process

Availability of Application Forms

Application kits which contain the prescribed application forms and other appropriate information for the applicant will be mailed to grantees who have been conducting rehabilitation long-term training projects during the 1979–1980 academic year and are eligible to apply for a grant under this Program Announcement. Other eligible applicants may request application materials from the appropriate Regional Office of the Rehabilitation Services Administration as follows:

Region I

RSA Regional Program Director, Dept. of Health, Education and Welfare, John F. Kennedy Federal Building, Room E–400, Government Center, Boston, Massachusetts 02203.

Region II

RSA Regional Program Director, Dept. of Health, Education and Welfare, 26 Federal Plaza, Room 4106, New York, New York 10007.

Region III

RSA Regional Program Director, Dept. of Health, Education and Welfare, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101.

Region IV

RSA Regional Program Director, Dept. of Health, Education and Welfare, 101 Marietta Street, NW., Suite 903, Atlanta, Georgia 30323.

Region V

RSA Regional Program Director, Dept. of Health, Education and Welfare, 300 South Wacker Drive, 31st Floor, Chicago, Illinois 60606.

Region VI

RSA Regional Program Director, Dept. of Health, Education and Welfare, 1200 Main Tower Building, Room 2040, Dallas, Texas 75202.

Region VII

RSA Regional Program Director, Dept. of Health, Education and Welfare, 601 East 12th Street, Kansas City, Missouri 64106.

Region VIII

RSA Regional Program Director, Dept. of Health, Education and Welfare, Federal Office Building, Room 7415, 19th and Stout Streets, Denver, Colorado 80202.

Region IX

RSA Regional Program Director, Dept. of Health, Education and Welfare, Federal Office Building, 50 United Nations Plaza, San Francisco, California 94102.

Region X

RSA Regional Program Director, Dept. of Health, Education and Welfare, Arcade Building, 1321 Second Avenue (MS 622), Seattle, Washington, 98101.

Application Submission

In order to be considered for a rehabilitation long-term training grant, all applications must be submitted on standard forms provided for this purpose by the Commissioner, Rehabilitation Services Administration, in accordance with guidelines established by the Commissioner. The application shall be executed by an individual authorized to act for the applicant agency and to assume the obligations imposed by the terms and conditions of the grant award, including the regulations for the Rehabilitation Long-Term Training Program.

One signed original and two copies of the grant application, including all attachments, are required.

1. Applications for the support of long-term training projects of Regional scope should be submitted to the Regional Office official designated in the application kit. The overwhelming majority of long-term training projects are in this category.

2. Applications for the support of special long-term training projects of national scope, should be addressed as follows: Division of Grants and Contract Management, Office of Human Development Services, Room 1427, 330 C Street SW., Washington, D.C. 20201.

Special long-term training projects of national scope are those projects which are designed to (a) have a direct and unique impact on rehabilitation service and training programs throughout the country; (b) encompass participants from all sections of the country; (c) demonstrate new program initiatives in areas of special priority interest; or (d) be conducted in more than one geographical location throughout the country.

OMB Circular A–95 Notification Process

Applicants for rehabilitation long-term training grants are not routinely required to notify the State and Areawide A–95 Clearinghouse of the intent to apply for Federal assistance. States are authorized to extend the project notification and review procedures of OMB Circular A–95 to include training grants. If the applicant's State has extended the coverage of OMB Circular A–95 to this program, however, the Clearinghouse procedures must be observed.

Application Considered

The Commissioner, Rehabilitation Services Administration determines the final action to be taken with respect to each new and competing continuation grant application

All new competing continuation grant applications are subject to a competitive review and evaluation conducted by qualified non-Federal consultants experienced in the training of rehabilitation personnel. The Commissioner takes into account the competitive review by the non-Federal consultants, the comments of the State vocational rehabilitation agencies, the D/HEW Regional Offices and the Rehabilitation Services Administration Central Office program office, in reaching a decision on each competing application.

After the Commissioner has reached a decision either to disapprove or not to fund a competing grant application, the unsuccessful applicant is notified in writing of that decision.

State Vocational Rehabilitation Agency Review

Applicants are strongly advised to consult with their State vocational rehabilitation agency in the initial stages of application development. Applications submitted under the rehabilitation long-term training program are not required to have State vocational rehabilitation agency approval before submission to the Rehabilitation Services Administration. A copy of the application may be submitted by the applicant concurrently to the State vocational rehabilitation agency for information purposes. Except in the case of long-term training projects of national scope, State vocational rehabilitation agencies are requested to review and comment on each application after formal submission. All applications are expected to reflect relevance to State vocational rehabilitation agency service programs.

Grant Awards to Successful Applicants

The Commissioner makes grant awards consistent with the purposes of the Rehabilitation Act, the regulations, and program announcements within the limits of Federal funds available. The official grant award document is the Notice of Financial Assistance Awarded which sets forth in writing the amount of funds granted, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the total grantee participation. The initial award also specifies the

project period for which support is contemplated.

Special Consideration for Funding

In awarding long-term training grants, priority will be given to the support of training projects in those professional fields which directly support and enhance the rehabilitation service delivery activities of the State vocational rehabilitation agencies. Emphasis in funding in FY 1980 will be given to training proposals in the fields of Rehabilitation Counseling, Rehabilitation of the Blind, Rehabilitation of the Deaf, Rehabilitation Facility Administration, Vocational Evaluation and Work Adjustment and Rehabilitation Medicine. Special consideration will also be given to training proposals submitted by historically black colleges and universities and other institutions which reach substantial numbers of handicapped students or students from minority groups.

Criteria for Review and Evaluation of Grant Applicants

All new and competing continuation applications received in response to this announcement will be reviewed by qualified non-Federal experts utilizing a "Training Grant Application Review Rating Form". A copy of this rating form is included in each application kit.

Applications are evaluated against the following criteria:

1. The relevance of the purpose and the content of the training project to the administratively established objectives of the State/Federal rehabilitation program and the Rehabilitation Act of 1973, as amended;

2. The methodolgy to be employed in implementing the project and its feasibility for the achievement of the established education objectives;

3. The adequacy of the plan for the evaluation of the effectiveness of project activities;

4. The existence of a working relationship with the State vocational rehabilitation agency and other agencies and rehabilitation facilities providing vocational rehabilitation or independent living rehabilitation services;

5. The extent to which the training projects holds promise of increasing the supply or improving the skill competence of personnel trained to deliver vocational rehabilitation or independent living rehabilitation services to severely physically or mentally handicapped persons, or other groups of handicapped persons, such as handicapped persons from minority groups;

6. The extent to which other training programs in the same field are available in the State or Region;

7. The utilization, for clinical, field, or instructional experiences, of a "rehabilitation setting", which means an agency or institution operating an organized program of rehabilitation services designed to help severely physically or mentally handicapped persons function optimally within their capacities and limitations.

8. Evidence that the supervised clinical practice will be educationally focused and that standards to assure the competence of those staff persons supervising students have been established and will be maintained by the training institution;

9. Designation of a project director qualified in a professional field which contributes to the rehabilitation of the disabled, who is able to devote sufficient time to the project to ensure its proper direction;

10. The financial resources of the applicant for accomplishing the objectives of the training project, how much the applicant plans to contribute to the total cost of the project, the adequacy of the work plan for the entire project period of time for which Federal support is requested, and the extent to which the estimated cost to the government is reasonable and necessary to accomplish the project objectives;

11. The personnel and facility resources available to the applicant for accomplishing the objectives of the training project;

12. The criteria to be used for the selection of students to whom traineeships are to be awarded, with evidence of concern for the recruitment of handicapped students and students from minority groups into the different rehabilitation professions;

13. Evidence that the training institution and all clinical and field instruction settings are free of architectural, communication and other barriers to the training of handicapped individuals;

14. Where appropriate, evidence of current accreditation by the designated accrediting agency;

15. Information on the employment outlook for graduates of the training program including reports from potential employers, job vacancies in the geographical area served by the educational institution, and records of positions held by students who have completed the training program; and

16. Extent to which application instructions are adequately addressed, including both the narrative statement and budget justification.

Experimental/Innovative and Rehabilitation Short-Term Training

This Program Announcement does not cover the experimental/innovative and rehabilitation short-term training programs. Separate announcements will be published at a later date providing information of Fiscal Year 1980 funds under these programs.

Closing Date for Receipt of Applications

1. New and competing continuation applications in the areas of Rehabilitation Medicine, Rehabilitation Counseling, Prosthetics and Orthotics, and Rehabilitation Continuing Education, will be accepted until February 1, 1980.

2. New and competing extension applications in the areas of Rehabilitation Facility Administration, Vocational Evaluation and Work Adjustment, Rehabilitation Nursing, Rehabilitation Social Work, Rehabilitation Psychiatry, Rehabilitation Psychology, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology, Rehabilitation of the Blind, Rehabilitation of the Deaf, Rehabilitation Job Placement and Job Development, Therapeutic Recreation, Rehabilitation of the Mentally Ill, Undergraduate Education for the Rehabilitation Services and Other Long-Term Training Areas will be accepted until February 29, 1980.

3. Application will be judged on time if:

a. The application was sent by mail not later than the date specified above as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service; or

b. The application is hand delivered to the office designated to receive the application in the application instructions. Hand delivered applications will be accepted no later than close of business on the date specified above in any case.

Late Applications

Applications received after the closing date are not accepted and applicants are notified accordingly.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 13.629, Rehabilitation Training.)

Dated: November 21, 1979.

Robert R. Humphreys,

Commissioner of Rehabilitation Services.

Approved: November 23, 1979.

Manuel Carballo,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 79-36859 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-92-M

Federal Allotment to States for Social Services Expenditures Pursuant to Title XX of the Social Security Act; Promulgation for Fiscal Year 1981

Promulgation is made of the Federal allotment for Fiscal Year 1981 for purposes of grants to States under Title XX of the Social Security Act pursuant to Section 2002(a)(2) of the Act which provides that the Federal allotment shall be determined and promulgated in accordance with said section.

For Fiscal Year 1981, the allotment limits are based on the Bureau of the Census population statistics contained in its publication, "Current Population Reports" (Series P-25, No. 799, April 1979) which is the most recent satisfactory data, available from the Department of Commerce at this time as to the population of each State and of all States.[1]

It is hereby promulgated, for purposes of grants to States for social services under title XX, that the Federal allotment to each of the 50 States and the District of Columbia for the Fiscal Year ending September 30, 1981, as determined pursuant to the Act and on the basis of said population data, shall be as set forth below:

State:

State:	*Federal allotment*
Total	$2,500,000,000
Alabama	42,900,053
Alaska	4,620,182
Arizona	26,987,366
Arkansas	25,061,335
California	255,588,929
Colorado	30,610,139
Connecticut	35,528,398
Delaware	6,683,787
District of Columbia	7,727,054
Florida	98,525,668
Georgia	58,285,374
Hawaii	10,283,631
Idaho	10,065,806
Illinois	128,895,054
Indiana	61,610,070
Iowa	33,201,110
Kansas	26,918,579
Kentucky	40,102,722
Louisiana	45,468,094
Maine	12,507,739
Maryland	47,497,306
Massachusetts	66,195,859
Michigan	105,347,030
Minnesota	45,949,602
Mississippi	27,560,590
Missouri	55,717,332
Montana	8,999,610
Nebraska	17,941,898
Nevada	7,566,551
New Hampshire	9,985,555
New Jersey	84,000,184
New Mexico	13,894,940
New York	203,471,442
North Carolina	63,937,358
North Dakota	7,474,836
Ohio	123,231,605
Oklahoma	33,017,678
Oregon	28,019,169
Pennsylvania	134,707,541
Rhode Island	10,719,281
South Carolina	33,453,328
South Dakota	7,910,485
Tennessee	49,950,703
Texas	149,198,633
Utah	14,984,064
Vermont	5,583,198
Virginia	59,019,100
Washington	43,266,916
West Virginia	21,323,917
Wisconsin	53,642,263
Wyoming	4,860,936

[1] It should be noted that due to rounding, the total United States population estimate (218,059,000) as shown in the Census report is not the total of the individual States estimated population (218,065,000) which was used in computing ratios to determine allotments.

Dated: November 9, 1979.

Ernest L. Osborne,

Commissioner, Administration for Public Services.

Approved by: November 16, 1979.

Manuel Carballo,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 79-37115 Filed 11-29-79; 10:18 am]

BILLING CODE 4110-92-M

Social Security Administration

Supplemental Energy Allowance Program for the Low Income Population Under Public Law 96-126

AGENCY: HEW.

ACTION: Notice.

SUMMARY: Public Law 96-126 was signed by the President on November 27, 1979. The law provides, among other funding, $1.2 billion for distribution by HEW and States to aid low income persons during the winter heating season.

Approximately $400 million of the funds are to be used for direct, Federally administered payments to all Supplemental Security Income (SSI) program recipients (except those persons who receive Federal medical assistance funds and are in institutions). A separate Public Notice will be issued soon regarding these funds.

Eight-hundred million of the funds, less certain amounts for Federal administrative costs, is allocated to the States for distribution to their low income population. This Notice gives public notification of the rules [Program Instruction Number SSA-AT-79-42 (OFA) (Special Series on Energy Assistance #3)] under which the funds will be distributed. The Program Instruction was issued on November 27, 1979, to States and other interested parties by the Social Security Administration's Office of Family Assistance. It is reproduced below as part of this Notice.

EFFECTIVE DATE: The Program Instruction is effective November 30, 1979.

FOR FURTHER INFORMATION CONTACT: SSA Regional Commissioners or Martin Scherr, Department of Health, Education, and Welfare, Social Security Administration, Office of Family Assistance, Room 4115 South Building, 3rd and C Streets, S.W., Washington, D.C. 20201, telephone: (202) 245-8817.

SUPPLEMENTAL INFORMATION: Public Law 96-126 allocates the available funds to States according to the following formula: (1) 50% based on the number of heating days squared times the number of households below 125% of the poverty level; (2) 50% based on the difference in home heating energy expenditures between 1978 and 1979. The portion of the allocation formula that distributes funds based on increases in home heating costs from 1978 to 1979 was applied by looking to the number of heating degree days for each State (from which heating needs may be derived); the relative use of each type of fuel by State; the efficiencies of each fuel and the price of each fuel. In addition, excess funds from the $400 million allocation for SSI recipients which result in certain States because of the statutory $250 maximum on payments from that allocation, will also be available for use by those States, under the same program developed for the allocation for the low income population. Table 1, in the Instruction, presents State-by-State allocations. States may use up to 10% of their expenditures for administrative costs.

Under Public Law 96-126, States are given broad latitude to decide how they will use their allocated funds, and the Program Instruction is consistent with this latitude. To receive the allocated funds, each State must submit, for approval by HEW, a plan for distributing the funds to low income people. The State may elect to distribute the funds using an HEW-developed plan for flat grants to AFDC recipients (not including AFDC Foster Care or Emergency Assistance), or it may elect to develop its own plan for distributing the energy assistance allocation.

If a State adopts the HEW-developed plan, it will provide a single, uniform energy assistance payment, no later than February 1980, to all people who received assistance under the Federal Aid to Families with Dependent Children (AFDC) program for a prior month of the State's choice. Under this plan, single-person AFDC assistance units would receive one-half of the

amount received by multi-person assistance units. The emergency payment would be provided as an unrestricted money payment, except that the State may make the payment as a protective payment if the AFDC assistance unit is already receiving protective payments under 45 CFR 234.60(a)(3)(i).

States that choose to develop their own plans may use the funds in a variety of ways, including but not limited to: making payments of pre-determined amounts to people already participating in other assistance programs (e.g., AFDC, Food Stamps, a statewide program of regularly paid General Assistance); transfering all or part of the funds to the State agency administering the Community Services Administration's Emergency Crisis Intervention Program; targeting households with higher energy costs rather than distributing the funds broadly; establishing a vendor line of credit for certain low-income populations. The Program Instruction provides pre-printed plans for some of these options. State programs may only use funds to assist persons with incomes below 125% of the poverty level, or who are receiving AFDC, Food Stamps or regularly paid General Assistance, and proof of income eligibility must be required.

Certain administrative and monitoring requirements are also described in the Program Instruction. These include the requirement that no emergency energy assistance be paid to recipients after June 30, 1980; that duplicate payments be avoided whenever possible; and that adequate provision be made for the participation of Native Americans. The Appendix to the Program Instruction contains a section entitled "General Administrative Requirements" relating to administration, fiscal accountability, quality assurance, review and appeals, and administrative costs which apply to all State plans except those in which the funds are transferred for use under the State's CSA Emergency Crisis Intervention Program. In those cases the State must adhere to CSA's requirements, and the Department will monitor the program through agreements with CSA.

States have until December 27, 1979, to submit to HEW their plans for distribution of the emergency allocation. HEW will approve or disapprove each proposed plan within 15 days of receipt. States have 5 additional days in which to modify and resubmit disapproved plans.

The Department is not providing for a public comment period on these rules; they are effective upon publication. This is because of the urgency with which the funds must be distributed to the States and, ultimately, to the low-income population, in order for them to be available this winter. Even with the most rapid Federal and State actions, many States are expected to have difficulty making these funds available to needy populations before January, 1980.

Dated: November 27, 1979.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Department of Health, Education, and Welfare, Social Security Administration, Office of Family Assistance, Washington, D.C. 20201

November 27, 1979.

Program Instruction

Action Transmittal SSA-AT-79-42 (OFA)

(Special Series on Energy Assistance #3)

To: State agencies administering the supplemental energy allowance program of low income energy assistance for fiscal year 1980 under Public Law 96-126.

Subject: Supplementary Energy Allowance For the Low Income Population—State Options For Use Of Federally Appropriated Funds Under Public Law 96-126 for Fiscal Year 1980.

Purpose:

—To establish the Federal requirements for State participation in the Supplemental Energy Allowance Program (EAP) for FY 80.

—To advise States of the conditions for receiving Federal funds for this energy assistance for the low income population for FY 80.

—To establish procedures for submitting and processing State plans required for the Energy Allowance Program for FY 80.

Content: This Program Instruction provides detailed information and preprinted State Plans for State participation in the Fiscal Year 1980 EAP administered by HEW. It is organized as follows:

I. General Information

II. Plan A: HEW Developed Program for Energy Assistance Payments for AFDC Recipients

III. State Option Programs

A. General
B. Plan B: Flat EAP to Assistance Population Other than AFDC
C. Plan C: Transfer of Funds to Agency Administering Community Services Administration (CSA) Energy Crisis Assistance Program (ECAP)
D. State-Developed Plan

IV. Description of Plan Preprint for General Administrative Requirements

V. Review and Approval of State Plans

VI. Auditing and Monitoring

Appendix—*State Plan Preprints for EAP Program*—Instruction for Use of Tabs

Tab A—Plan A: HEW—Developed Flat Grant Plan for AFDC Recipients
Tab B—Plan B: Flat EAP to Assistance Population Other than AFDC
Tab C—Plan C: Transfer of Funds to Agency Administering CSA ECAP
Tab D—Plan D: State Developed Plan
Tab E—General Administrative Requirements for Plans
Tab F—Amendment to Approved Cost Allocation Plan

I. General Information

States have recently received two Action Transmittals in the Special Series on Energy Assistance. Transmittal #1 (SSA-AT-79-39 (OFA), dated October 10, 1979) describes the options available under current law to assist AFDC recipients with high energy costs. Transmittal #2 (SSA-AT-79-40 (OFA), dated October 11, 1979) describes the Community Services Administration (CSA) Energy Crisis Assistance Program (ECAP).

On November 27, 1979, Public Law 96-126 was signed, which provides $1.35 billion for Fiscal Year 1980 low income supplemental energy allowances to the channelled through CSA and HEW to the States. It is Congressional intention that the funds be used for the low income population for emergency heating assistance this winter. The legislation directs that payments made under any State Plan for low-income energy assistance "* * * *shall not* be considered as income or resources under any other public or publicly assisted income tested program, but *shall* be taken into consideration in determining eligibility for energy crisis assistance." (Italics added.)

The appropriation provides that:

1. CSA will receive $150 million to supplement the $250 million already appropriated to expand the ECAP.

2. $1.2 billion, will be transferred to HEW.

a. About $400 million of the funds will be used for direct, federally administered payments to all Supplemental Security Income (SSI) recipients (except those persons who receive title XIX funds and are in institutions). These payments will be made by the Federal Government in January, 1980, and no State action is required. The maximum grant to SSI recipients is $250. Further information will be forthcoming from the Social Security Administration on this part of the emergency heating assistance program.

b. $800 million of the funds, less certain amounts for Federal administrative costs, is allocated to the States based upon a formula established by Congress. Fifty percent of the appropriated funds is allocated based on the number of heating degree days squared times the number of households with income below 125% of the poverty level. Fifty percent of the appropriated funds is allocated based on an estimate of the difference in home heating energy expenditures between 1978 and 1979. (A list of the allocations to the States of the $800 million, less Federal administrative costs, for the EAP is attached as Table 1.[2]) Each State may use up to 10% of its total expenditures on administrative costs.

In addition, exess funds from the SSI allocation (described in a. above) in certain States may be used under that State's Plan for energy assistance. The estimated excess amounts are identified in column 2 of Table 1 and may be combined with the State's basic grant level for program planning and approval purposes.[2]

As a condition for receipt of these funds, each State must submit, for approval by HEW, a plan for distributing the funds to low income people. The State Attorney General, on behalf of the Governor of each State, must certify that the State agency that will be responsible for administration of the EAP under the State's Plan is properly authorized to do so. The rest of this Instruction relates to the State Plan and conditions for approval of such plans.

[1] [Note.—American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands, are considered States under the legislation, but receive no funds under the allocation formula. Therefore, they are not listed on the Table.]

[2] [Note.—These amounts may increase or decrease based upon actual SSI caseloads.]

Table 1.—*Supplemental Energy Allowance Program Allocations and SSI Excess*

	EAP allocation	SSI excess	Total
State:			
Alabama	$4,336,141	0	$4,336,141
Alaska	3,080,642	$402,564	3,483,206
Arizona	1,872,240	0	1,872,240
Arkansas	3,285,620	0	3,285,620
California	20,837,205	0	20,837,205
Colorado	10,370,051	0	10,370,051
Connecticut	21,060,267	2,612,089	23,672,356
Delaware	2, 649,379	0	2, 649,379
District of Columbia	3,017,191	0	3,017,191
Florida	2,588,444	0	2,588,444
Georgia	5,738,277	0	5,738,277
Hawaii	0	0	0
Idaho	5,121,928	249,127	5,371,055
Illinois	45,232,548	0	45,232,548
Indiana	21,812,796	0	21,812,796
Iowa	15,125,268	54,096	15,179,364
Kansas	5,138,361	0	5,138,361
Kentucky	9,527,260	0	9,527,260
Louisiana	2,094,830	0	2,094,830
Maine	12,425,176	0	12,425,176
Maryland	14,545,952	0	14,545,952
Massachusetts	40,390,843	0	40,390,843
Michigan	47,195,837	0	47,195,837
Minnesota	35,913,647	6,250,492	42,164,139
Mississippi	2,444,873	0	2,444,873
Missouri	15,924,029	0	15,924,029
Montana	5,320,144	396,444	5,716,588
Nebraska	6,786,911	0	6,786,911
Nevada	1,544,449	0	1,544,449
New Hampshire	7,706,362	1,560,587	9,266,949
New Jersey	36,244,190	0	36,244,190
New Mexico	3,140,083	0	3,140,083
New York	116,997,099	0	116,997,099
North Carolina	16,140,486	0	16,140,486
North Dakota	7,018,228	1,104,185	8,122,413
Ohio	39,864,914	0	39,864,914
Oklahoma	4,580,746	0	4,580,746
Oregon	11,232,027	0	11,232,027
Pennsylvania	58,909,370	0	58,909,370
Rhode Island	6,523,514	0	6,523,514
South Carolina	4,800,820	0	4,800,820
South Dakota	5,736,468	455,391	6,191,859
Tennessee	9,275,421	0	9,275,421
Texas	8,114,038	0	8,114,038
Utah	4,251,539	70,828	4,322,367
Vermont	5,407,969	0	5,407,969
Virginia	16,575,523	0	16,575,523
Washington	18,511,687	0	18,511,687
West Virginia	6,788,562	0	6,788,562
Wisconsin	31,157,093	0	31,157,093
Wyoming	1,902,747	264,785	2,167,532
All States	786,259,195	13,420,588	799,679,783

State Plans for Low Income Energy Assistance in Fiscal Year 1980

HEW has developed a plan that States can adopt to distribute the emergency funds as flat grants to AFDC recipients. The HEW plan is described later in this Program Instruction. The HEW Plan is attached at Tab A in a pre-printed format.

Alternatively, the State may develop its own plan. Under this option, HEW has prepared two suggested programs: Plan B, Flat Grants to Assistance Populations Other than AFDC (Tab B); and Plan C, Transfer of Funds to the CSA Energy Crisis Assistance Program (Tab C). The State may use one of those, or it may design an approach of its own and submit it for approval using Preprint Plan D. The State may also choose to use a portion of its funds under one plan and a portion under another, thus splitting the total funding. (Preprints have spaces in which to indicate the amount or proportion of total funds allocated to the State to be distributed according to that plan.)

A State's Plan must include a description of its program, using the appropriate preprint—Tab A, B, C, or D. States submitting Plans A, B or D must include Tab E, the General Administrative Requirements. The CSA Administrative Requirements are incorporated into Plan C instead of these HEW requirements.

When properly executed by the State and HEW, the State Plan Preprint (and the General Administrative Requirements for Plans A, B or D) comprise the approved State Plan for administration of the Energy Assistance Payments program. The approval process is described below in section V, *"Review and Approval Of State Plans"*.

In addition to the requirements in this Program Instruction, the State must meet all requirements in the State Plan it uses, including Tab E when used. The State Plans contain many important assurances with which the State must comply—e.g., merit systems, equal opportunity, affirmative action, protection of Civil Rights and provisions for the handicapped. States are urged to review the preprint agreements for full descriptions of the requirements of each plan.

The EAP is not an AFDC payment. However, certain AFDC regulations are used in this program and are specifically incorporated into the State Plan. These are binding requirements.

II. Plan A: HEW Developed Program for Energy Assistance Payments

Under Plan A, the State accepts the HEW-developed plan for providing a flat EAP no later than February 1980 to all people who received AFDC (except AFDC-Foster Care or Emergency Assistance) for a prior month. The State is responsible for making this payment.

Under Plan A, the payment amount to eligible assistance units is established by the State based upon its estimate of the number of eligible assistance units, the expected costs of administering the program, and the funds allocated to the State. *There shall be a single payment amount to eligible assistance units for the entire State, with single-person assistance units receiving one-half of the amount received by multi-person assistance units.* The EAP under this plan is provided as an unrestricted money payment.

Where an SSI recipient and an AFDC assistance unit reside in a common household, the State may reduce the EAP to the AFDC assistance unit so that the total EAP to that common household does not exceed the State's EAP for a multi-person AFDC assistance unit.

For approval under Plan A, the State shall adjoin Tab A, the pre-printed instruction for the HEW plan, and Tab E, the preprinted General Administrative Requirements. These together comprise the agreement between HEW and the State to administer the HEW-developed plan for energy assistance for AFDC recipients.

III. State Options

A. *General*

Instead of using the HEW-Developed Plan A, the State may choose to submit a plan of its own design to distribute the energy assistance funds. According to the legislative history of the appropriation, the funds may be used "* * * in a variety of ways, including but not limited to the following: retain all or part of the funds for crisis intervention; target households with higher energy costs rather than distributing it broadly; establish a vendor line of credit; make payments to those already participating in other income assistance programs (AFDC, Food Stamps)."

The appropriated funds carry with them the following requirements which all State-developed plans must meet:

1. Grants are restricted to households with income under 125% of the CSA poverty level (except that households receiving AFDC, Food Stamps, or a statewide program of regularly paid General Assistance may be considered categorically income-eligible).

2. Proof of income eligibility must be required. Proof that a person or household is a recipient of AFDC, Food Stamps or a statewide program of regularly paid General Assistance—or of an income-tested program which itself requires proof of income under 125% of the CSA poverty level—will be considered adequate.

3. No assistance may be paid to recipients after June 30, 1980.

4. States must give priority to households experiencing significant increases in heating fuel costs between 1978 and 1979. In doing this, States may not exclude those who pay fuel bills indirectly (i.e., through rent). For those households, the State will determine the extent to which heating cost increases caused rent increases and consider such rent increases to be increases in heating costs. (These requirements may be satisfied in categories or groups of recipients, rather than on a case-by-case basis. For example, households receiving AFDC, Food Stamps or statewide General Assistance are considered to have satisfied this requirement.)

5. Duplicate payments must be avoided whenever possible.

6. The State will make adequate provision for the participation of Native Americans.

To facilitate the State planning process, we have included in the Appendix at Tabs B and C, two plans States may wish to consider for administration of the EAP. Alternatively, a State may develop other options for administration of the EAP, using the Plan outline at Tab D which is a preprint of the basic requirements which must be included under a State-developed Plan.

The next section contains brief summaries of Plans B, C, and D.

B. *Plan B: Flat EAP to Assistance Population Other Than AFDC*

This plan is similar to Plan A in most respects. Under it, however, the State disburses its grants to a different target group of recipients of income tested programs. Under this plan a State may use Food Stamps, AFDC or a statewide program of regularly paid General Assistance as the basis for eligibility.

The State shall incorporate Tab E, the General Administrative Requirements.

C. *Plan C: Transfer of Funds to Agency Administering CSA Energy Crisis Assistance Program (ECAP)*

Under this Plan, the State transfers all or part of its allocation to the State ECAP agency. The ECAP agency shall be required to administer these funds according to the same guidelines under which it administers the balance of the ECAP money, in accordance with section 222(a)(5) of the Economic Opportunity Act, its approved State Plan and the CSA Regulations for the ECAP program, 45 CFR 1061.70. (A copy of the current CSA regulations for ECAP was in the Federal Register on October 11, 1979.) The current CSA regulations were sent to State agencies as an attachment to Action Transmittal SSA–AT–79–40, (Special Series on Energy Assistance #2) dated October 11, 1979.

The State will be required by CSA to amend its State Plan for ECAP to reflect any changes in funding or program. Certification of CSA approval of a State Plan will be required by HEW before funds will be made available.

To choose this option, the State shall execute the attached preprint agreement, Tab C, stating what portion of the EAP funds will be allocated to the ECAP. Since the administration of the ECAP is governed by CSA regulations, the State is not required to execute Tab E, General Administrative Requirements, as part of the agreement. The State ECAP agency will be accountable to HEW through CSA for the Federal funds transferred to that agency and will comply with CSA financial reporting directives. HEW will monitor the program through agreements with CSA.

D. *State-Developed Plan*

A State may develop its own plan for distribution of the low-income energy funds. The plan may employ distribution mechanisms or payment schemes of the State's choice, subject to the requirements identified in this Program Instruction and in the Plan Preprint. These requirements will form the basis for HEW review and approval of any plan submitted. Eligibility conditions must be based upon reasonable classifications and must not exclude individuals or groups on an arbitrary or unreasonable basis.

The Preprint form at Tab D is for use by States proposing their own plans. Tab E, General Administrative Requirements, must be attached to make this submittal complete.

2IV. General Administrative Requirements

The General Administrative Requirements at Tab E relate to administration, fiscal accountability, quality assurance, administrative costs and a number of other procedures and/or requirements which apply to funds spent under an EAP plan except for funds transferred to ECAP under Plan C.

States may charge up to a maximum of 10% of their total expenditures under EAP for allowable administrative costs. Those costs may be direct or indirect, but must arise solely as a result of administering the EAP. While the maximum permissible is 10%, it is expected that in most cases costs will not be that high.

V. Review and Approval of State Plans

State plans for the EAP will be reviewed by the Social Security Administation's Office of Family Assistance in Washington, D.C. The basis for plan approval will be the requirements contained in this Program Instruction and in the Plan Preprints.

States have until December 27, 1979, to submit their EAP State plans to HEW (30 days after enactment of PL 96–126). (The date of submission will be the date on which the State mails or otherwise delievers the Plan.) HEW then has 15 days from the date of receipt to approve or disapprove it. If HEW fails to act within 15 days, the plan will automatically be considered as approved. If HEW rejects a State plan, the State will have 5 days to submit a new plan. HEW will then have 5 more days to either accept or reject that plan. The Plan is effective on the date it is signed by HEW.

Any Plan for energy assistance submitted to HEW that has been approved by CSA, will be automatically approved for purposes of the State's participation in the HEW EAP program.

It should be recognized that CSA will require an amendment to the State ECAP Plan to reflect changes in funding and program. HEW will require certification from CSA that the State Plan and amendments meet CSA requirements.

Social Security Regional Commissioners and their staffs are available to assist the States to prepare their EAP Plans on a high priority basis.

VI. Auditing and Monitoring

States shall exercise care in administration of the EAP so as to assure a high quality of administration. States shall maintain an accounting system and records adequate to demonstrate that EAP funds are used in accordance with the requirements of this Program Instruction, the State Plan, and Congressional intent.

Financial review may be conducted by the Social Security Administration and audits may be conducted by the HEW Audit Agency and disallowances may be made based upon such reviews and audits.

The State is responsible for any funds spent in excess of its allocation from HEW for the EAP. Funds not spent will be returned to HEW.

A revised State Plan may be submitted for approval whenever a State determines that it will not expend, under its approved State Plan, all the funds allocated to it, or for any other reasons the State may wish to make changes.

Barry L. Van Lare,

Associate Commissioner for Family Assistance.

Appendix.—State Plan Preprints for Low Income Energy Assistance Program, Fiscal Year 1980

Instructions

Part I—

Tab A: Plan A—HEW-Developed Flat Grant Plan for AFDC Recipients
Tab B: Plan B—Flat Grant to Assistance Populations Other than AFDC
Tab C: Plan C—Transfer of Funds to Agency Administering CSA ECAP Program
Tab D: State-Developed Plan

Part II—

Tab E: General Administrative Reguirements
Tab F. Amendment to State's Approved Cost Allocation Plan

Instructions for Use of Preprints

Each State shall submit a plan for implementation of the EAP defining the specific characteristics of how the State plans to operate its EAP.

The State may elect any of the pre-printed plans—Tab A, Tab B, or Tab C—or it may elect to develop its own plan using the preprinted outline at Tab D. The State may use a combination of these plans if it wishes, splitting its funds among more than one plan. The General Administrative Requirements in Tab E must be used when the State adopts the preprints at Tab A, Tab B or Tab D.

Each of the pre-prints has certain items about which the State must make decisions prior to submission for approval. These choices are labeled at the appropriate places in each preprint. To be approvable, all information necessary to fill out the form must be provided in clear and unambiguous language. Blanks or imprecise information wil delay action or result in disapproval for lack of sufficient information. Where more room is needed than is provided on the form, the State should use an attachment page as an extension. No alterations are permitted in the execution of the General Administrative Requirements. After the plan is executed by the proper State officials, including certification by the State Attorney General, two originals and 6 copies should be sent to: U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Family Assistance—Energy Assistance Payment Program, P.O. Box 23367, L'Enfant Plaza Station, Washington, D.C. 20024.

Please note that a special P.O. Box has been opened to facilitate handling of State Plans under this program. Failure to use the

above address and box number will likely delay receipt and, therefore, approval.

In addition, a copy should be sent to the SSA Regional Commissioner. The State should indicate who the contact person is in case there are questions about the State Plan.

Review and approval will be prformed as described in the Program Instruction. Questions on proper completion of the plan should be directed to the appropriate SSA Regional Commissioners.

State Plan Preprint for Low Income Supplemental Energy Allowance, Fiscal Year 1980

State ———

Plan A: HEW Plan for a Flat Grant to AFDC Recipients

State Plan

A. As a condition to the receipt of Federal funds under Public Law 96-126, for the purpose of providing emergency heating assistance, the ———
(Name of Agency Designated to Administer the Program) agrees to administer the Low Income Energy Assistance Program in accordance with the requirements in Program Instruction SSA-AT-79-42 (OFA) dated November 27, 1979, Tab E of that Instruction, the provisions of the State plan, 45 CFR 74 (Administration of grants), and other EAP policies and interpretations that may be issued by HEW. The Attorney General Certifies that the named agency is authorized under State law to administer this plan.

B. Applicability of AFDC Regulations

The Energy Assistance Payment is not an AFDC payment under Title IV-A of the Social Security Act, although under this Plan A eligibility is limited to persons who are current recipients of AFDC as defined in paragraph E below. AFDC regulations do not apply to the administration of the EAP Program except as the principles and requirements of specified AFDC regulations are explicitly incorporated.

C. Amount of State's EAP Allocaton To Be Used Under This Plan

(fill in $ or %) ———

D. Administration of the Energy Assistance Payments Program

1. Payment Month. All EAP payments will be made within one 30-day period which is defined as the "payment month." The payment month may not begin later than February 1, 1980. The payment month begins: ———

2. Nature of Payment. The EAP is paid in a one-time unrestricted money payment, as defined in 45 CFR 234.11(a) (Assistance in the form of money payments). This does not preclude the issuance of a protective payment if the AFDC assistance unit is already receiving protective payments because of circumstances specified in 45 CFR 234.60 (Protective and vendor payments for dependent children), and Secton 2.6 of the State Plan for AFDC (Simplified Plan). Vendor payments are not used for EAP under this plan.

The Energy Assistance Payment is—
(Check One)

☐ issued as a separate warrant or check
☐ combined with the regular AFDC check or warrant.
☐ separate warrant or check in some places; combined in others. Specify ———.

3. Notice. Each EAP recipient will be informed of the amount of the payment and that the payment is a one-time Federal payment to reduce the burden of the high cost of energy for the winter 1979-80. This notice shall precede or accompany the payment.

E. Who is Entitled to Energy Assistance and How Much

1. Eligibility—(a) Each AFDC or AFDC-UP assistance unit that was receiving assistance under Title IV-A of the Social Security Act for the month of ——— is eligible for an Energy Assistance Payment.

Note.—Receipt of assistance as AFDC-Foster Care or Emergency Assistance under Title IV-A does not result in eligibility for EAP.

2. Amount of the Energy Assistance Payment—From the allocation of funds made available to the State by the Secretary, the State shall estimate and set aside an amount for the cost of administering the State plan. Such amount shall not exceed 10 percent of the total State expenditures.

The State shall estimate the number of single and multi-person assistance units that will receive an EAP. An AFDC or AFDC-UP assistance unit where only one person is included in the payment is a single persons assistance unit; where two or more persons are included in the payment it is a multi-person assistance unit. The State's estimate shall be based upon the month used to determine eligibility for the EAP. The State shall then calculate the amount that each of these two categories of assistance units will receive. The amount paid to a single person assistance unit shall be one-half the amount paid to multi-person assistance units.

For the period used to determine eligibility:

a. the estimated number of AFDC and AFDC-UP assistance units where only one person is included in the payment is: ———. The EAP is: $———.

b. the estimated number of AFDC and AFDC-UP assistance units where two or more persons are included in the payment is: ———. The EAP is: $———.

c. the estimated cost of administration of the EAP under the State plan is $———.

d. An EAP to a SSI recipient who lives with the AFDC assistance unit as a member of a common household ☐ will ☐ will not be considered in determining the EAP to the AFDC assistance unit. If the State elects to count the EAP to the SSI assistance unit, the total EAP to the common household will not exceed the State's EAP for a multi-person assistance unit.

e. The following procedure(s) will be followed to avoid duplicate payments under the State plan: ———.

The (Name of State Agency) certifies that it is the agency designated by the following State Action ——— to administer these funds under this Plan and to submit this Plan.

In Witness Whereof, the parties hereby execute this agreement this ——— day of ———, 1979.

———
(Signature of Agency Head)
(Title) ———
(Date) ———

I, ———, certify that I am the Attorney General of the State of ———; that ———, who signed this agreement on behalf of the State, was then ——— of said State, and is authorized to enter into this agreement on behalf of the State and that there is authority under the laws of the State of ——— to carry out this agreement.

———
Signature of Attorney General
Date ———

For the Department of Health, Education and Welfare:

———
Barry L. Van Lare,
Associate Commissioner for Family Assistance, Social Security Administration
(Date) ———

Tab B

State Plan Preprint for Low Income Supplemental Energy Allowance FY 1980

State ———

Plan B: Flat Grants to Assistance Populations Other Than AFDC

State Plan

A. As a condition to the receipt of Federal funds under Public Law 96-126, for the purpose of providing emergency heating assistance, the ———
(Name of Agency Designated to Administer the Program) agrees to administer the Low Income Energy Assistance Program in accordance with the requirements in Program Instruction SSA-AT-79-42 (OFA) dated November 27, 1979, Tab E of that Program Instruction, 45 CFR 74 (Administration of grants), the provisions of the State plan and other EAP policies and interpretations that may be issued by HEW. The Attorney General Certifies that the named agency is authorized under State law to administer this plan.

B. Applicability of AFDC Regulations

The Energy Assistance Payment is not an AFDC payment under Title IV-A of the Social Security Act. AFDC regulations do not apply to the administration of the EAP Program except as the principles and requirements of specified AFDC regulations are explicitly incorporated into this Plan to relate to EAP payments.

C. Amount of State's EAP Allocation To Be Used Under This Plan

(fill in $ or percent). ———

D. Administration of the Energy Assistance Payments Program

1. Payment Month. All EAP payments will be made within one 30-day period which is defined as the "payment month." The payment month may not begin later than February 1, 1980. The payment month begins: ———.

2. Nature of Payment. The EAP is paid in a one-time unrestricted money payment, as defined in 45 CFR 234.11(a) (Assistance in the form of money payments). This does not preclude the issuance of a protective payment if the assistance unit is already

receiving protective payments because of circumstances defined under the program which qualifies them for EAP under this plan. Vendor payments are not used for EAP under this plan.

The Energy Assistance Payment is—

☐ issued as a separate warrant or check.

☐ combined with the regular check or warrant of the ——— program.

☐ separate warrant or check in some places; combined in others. Specify: ———.

3. Notice. Each EAP recipient will be informed of the amount of the payment and that the payment is a one-time Federal payment to reduce the burden of the high cost of energy for the winter 1979–80. This notice shall precede or accompany the payment.

E. Who is Entitled to Energy Assistance and How Much

1. Eligibility—People who receive benefits under the (Check as appropriate)

☐ AFDC Program

☐ Food Stamps Program

☐ Statewide Program of regularly paid General Assistance for ——— (time period) are eligible for an EAP.

Note.—If General Assistance is checked, attach a description of the eligibility requirements for that program.

2. Amount of the Energy Assistance Payment. The payment amounts will be determined and applied according to the principles in 45 CFR 233.10 (General provision regarding coverage and eligibility).

Any differentials in benefits are due to demonstrable differences in circumstances of the assistance unit such as family size or established differentials or changes in shelter or heating costs (including those related to geography and climate).

The estimated amount or amounts the State will pay will be:

Recipients (Categories) ———

Estimated Number of Assistance Units ———

Payment Amounts per Assistance Unit $ ———

3. The estimated cost of administering the EAP under this State Plan is: $———.

4. Native Americans. Are there any Indian Reservations or lands on which the EAP will not be available on an equal basis to the rest of the State? ☐ No ☐ Yes

If [yes], describe how the EAP will be made available to residents of those lands or reservations: ———.

If [no] provision will be made to make the EAP available to residents of those lands and Reservations, what percentage or number of the State's EAP eligible population resides on those lands or reservations? ——— (number or percent)

5. Review and appeals will be provided for those who believe they have been improperly denied or underpaid, as follows:

———.

6. a. An EAP to a SSI recipient who lives with the AFDC assistance unit as a member of a common household ☐ will ☐ will not be considered in determining the EAP to the AFDC assistance unit. If the State elects to count the EAP to the SSI assistance unit, the total EAP to the common household will not exceed the State's EAP for a multi-person assistance unit.

b. The following procedure(s) will be followed to avoid duplicate payments under the State plan: ———.

The ——— (Name of State Agency) certifies that it is the agency designated by the following State Action ——— to administer these funds under this Plan and to submit this Plan.

In Witness Whereof, the parties hereby execute this agreement this ——— day of ———, 1979.

———

(Signature of Agency Head)

(Title) ———

(Date) ———

I, ———, certify that I am the Attorney General of the State of ———; that ———, who signed this agreement on behalf of the State, was then ——— of said State, and is authorized to enter into this agreement on behalf of the State and that there is authority under the laws of the State of ——— to carry out this agreement.

———

Signature of Attorney General

Date ———

For the Department of Health, Education and Welfare:

———

Barry L. Van Lare

Associate Commissioner for Family Assistance, Social Security Administration

Date ———

Tab C

State Plan Preprint for Low-Income Supplemental Energy Allowance FY 1980

State ———

Plan C: Transfer to Agency Administering the CSA Emergency Crisis Assistance Program

State Plan

A. As a condition to the receipt of Federal funds under Public Law 96–126, for the purpose of providing emergency energy assistance, the ——— (Name of agency designated to administer the program) agrees to administer the Low Income Energy Assistance Program in accordance with the requirements in Program Instruction SSA–AT–79–42 (OFA) dated November 27, 1979, the provisions of the State plan and other EAP policies and interpretations that may be issued by HEW. The Attorney General certifies that the named agency is authorized under State law to administer this plan.

B. The amount of EAP funds Allocated To The State ECAP agency is (fill in $ or percent) ———

C. (Agency) ——— will administer the funds in the same manner as it administers the balance of the ECAP funds, according to its approved ECAP State Plan and the CSA Regulations in 45 CFR 1061.70. (A copy of these rules was transmitted to all State agencies as an attachment to Action Transmittal SSA–AT–79–40, Special Series on Energy Assistance No. 2, October 11, 1979.) The State shall also comply with additional requirements that CSA will establish for administration, audit or review of the ECAP, and with requirements that HEW may establish for audit or review of the funds identified in B above, including certification by CSA that the State Plan has been approved by CSA.

The (Name of State Agency) ——— certifies that it is the agency designated by the following State Action ——— to administer these funds under this Plan and to submit this Plan.

In Witness Whereof, the parties hereby execute this agreement this ——— day of ———, 1979.

———

(Signature of Agency Head)

(Title) ———

(Date) ———

I, ———, certify that I am the Attorney General of the State of ———; that ———, who signed this agreement on behalf of the State, was then ——— of said State, and is authorized to enter into this agreement on behalf of the State and that there is authority under the laws of the State of ——— to carry out this agreement.

———

Signature of Attorney General

(Date) ———

For the Department of Health, Education, and Welfare:

———

Barry L. Van Lare,

Associate Commissioner for Family Assistance, Social Security Administration.

(Date) ———

Tab D

State Plan Preprint for Low-Income Supplemental Energy Allowance, Fiscal Year 1980

Plan D: State Developed Plan

State Plan

A. As a condition to the receipt of Federal funds under Public Law 96–126, for the purpose for providing emergency heating assistance, the ——— (Name of agency designated to administer the program) agrees to administer the Low Income Energy Assistance Program in accordance with the requirements in Program Instruction SSA–AT–79–42 (OFA) dated November 27, 1979, 45 CFR 74 (Adminstration of grants), Tab E of the Instruction, the provisions of the State plan and other EAP policies and interpretations that may be issued by HEW. The Attorney General Certifies that the named agency is authorized under State law to administer this plan.

B. Applicability of AFDC Regulations

The Energy Assistance Payment is not an AFDC payment under Title IV–A of the Social Security Act, although under this Plan eligibility is limited to persons who are current recipients of AFDC as defined in paragraph E below. AFDC regulations do not apply to the administration of the EAP Program except as the principles and requirements of specified AFDC regulations are explicitly incorporated.

C. Amount of State's EAP Allocation To Be Used in This Plan

(full in $ or %) ———

D. Eligibility

1. The eligible population is defined as follows:

Note.—In filling out this Section of the State Plan, the State should refer particularly to the list of requirements that state developed plans must meet, in Sections III–A and III–D of the Program Instruction, which are listed on pages 7, 8 and 10. For example, no one with income over 125% of the CSA poverty level can be eligible, except that recipients of AFDC, Food Stamps or a statewide program of regularly paid General Assistance may be considered income-eligible. Plans cannot be approved if they provide assistance in violation of the requirements in the Program Instruction.

2. a. An application (Check one) [ ] will, [ ] will not be required for receipt of the EAP.

If an application will be required, verification of income will be done.

b. If application will not be required, will all people in the eligible categories automatically receive payment? (Check one)
[ ] yes, and all are under 125% of the CSA poverty level or AFDC, Food Stamp or General Assistance recipients
[ ] no

c. If [no], state the method of determining who will and will not receive payment, including method of income verification.

d. The period of time over which income will be considered for determining income eligibility will be: ———

D. Payment

1. The payment amounts will be determined and applied according to the principles in 45 CFR 233.10 (General provision regarding coverage and eligibility).

Any differentials in benefits are due to demonstrable differences in circumstances of the assistance unit such as family size or established differentials or changes in shelter or heating costs (including those related to geography and climate).

2. The estimated payment(s) to each eligible assistance unit will be made according to the following schedule:

Dates and $ Amounts

1st payment ———
2nd payment (if any) ———
Additional Payments (if any) ———

3. Payments will be unrestricted cash payments: (Check one) [ ] yes, [ ] no.

If no, state restrictions or nature of benefit:

4. Payments will be (Check one): [ ] mailed, [ ] other.

If other, describe method

5. The following procedure(s) will be followed to avoid duplicate payments under the State plan:

6. a. The estimated number of eligible assistance units is: ———.

b. The estimated cost of administering this State Plan is: ———.

E. Review and appeals will be provided for those who believe they have been improperly denied or under-paid, as follows:

F. Outreach services will be provided to potential clients eligible for services, as follows:

G. Native Americans. Are there any Indian Reservations or lands on which the EAP will not be available on an equal basis to the rest of the State? [ ] No [ ] Yes.

If yes, describe how the EAP will be made available to residents of those lands or Reservations:

If no provisions will be made to make the EAP available to residents of those lands or Reservations, what percentage or number of the State's EAP-eligible population resides on those lands or Reservations?

Percentage or number: ———.

H. Notice

Each EAP recipient will be informed that the payment is a federal payment to reduce the burden of the high cost of energy for the winter of 1979–80. This notice shall precede or be issued at the same time as the payment.

The ———
(Name of State Agency)

Certifies that it is the agency designated by the following State Action ——— to administer these funds under this Plan and to submit this Plan.

In Witness Whereof, the parties hereby execute this agreement this ——— day of ———, 1979.

(Signature of Agency Head) ———
(Title) ———
(Date) ———

I, ———, certify that I am the Attorney General of the State of ———; that ———, who signed this agreement on behalf of the State, was then ——— of said State, and is authorized to enter into this agreement on behalf of the State and that there is authority under the laws of the State of ——— to carry out this agreement.

Signature of Attorney General ———
(Date) ———

For the Department of Health, Education, and Welfare:

Barry L. Van Lare,
Associate Commissioner for Family Assistance, Social Security Administration.
(Date) ———

Tab E

General Administrative Requirements: Preprint for Supplemental Energy Allowance Payments, Fiscal Year 1980

State ———

General Administrative Requirements for Plans A, B and D

A. Agency Responsibility

The agency signing the State's plan for administration of energy allowances under P.L. 96–126, and as authorized in Section 222(a) of the Economic Opportunity Act of 1964, as amended (45 USC 2809), accepts responsibility for the administration of the program. This includes responsibility for eligibility and administrative policy, and for operational procedures, including:

1. methods of notification of the eligible target population, to include Native Americans;
2. intake process;
3. methods of eligibility determination;
4. maintenance of adequate records supporting the eligibility decisions, including a consideration of income and energy cost increases;
5. method of payment or issuance of vouchers and cash flow;
6. the accounting system;
7. procedures for monitoring agency performance;
8. staffing and plans for staff training related to the energy program;
9. procedures for handling complaints and review process;
10. remedial methods for correction of administrative errors; and
11. performance of State audit.

B. Agency Delegation

If the designated agency uses another agency to perform any operational function of the energy program, the agencies shall enter into an agreement which shall specify at a minimum:

1. The division of responsibility between the agencies;
2. The manner in which the designated agency retains control and supervision of the program with respect to:
   a. eligibility policy;
   b. operational implementation;
   c. payment process and methods to reporting;
   d. recording and accounting procedures;
   e. monitoring of agency performance;
   f. handling of complaints and review processes;
   g. staffing and staff training plans;
   h. administrative cost reimbursement; and
   i. audits.

The agreement shall also specify remedial methods for the correction of administrative errors, if the agency providing operational support fails to carry out the provisions of the agreement.

Agreements entered into shall be submitted to HEW as an attachment to the State Plan and are subject to review and approval by the Department.

C. Federal Funding

1. Allocation of Funds and Method for Making Funds Available.

The amount of Federal funds the State receives for the EAP is determined by the Secretary of HEW.

A grant providing funds for both the EAP and related administrative costs will be made to the State in advance of the payment month. Funds will be made available by

Treasury check or letter of credit. Funds not expended shall be returned to HEW.

2. Reporting.

The State will submit financial status reports and performance reports in accordance with 45 CFR 74 (Administration of grants) and implementation instructions to be issued by the Department.

As a minimum the State will report:

a. number of households receiving energy assistance,

b. amount paid for energy assistance,

c. costs of administering the EAP, not to exceed 10% of the amount of funds expended by the State.

These items may be modified and other items added to comport to the approved State plan.

3. Expenditures made by the State after November 27, 1979, (the date on which PL 96-126 was signed) are allowable even if made prior to approval of the State Plan, to the extent that they are allowable under the State Plan.

D. Expenditures Not Reimbursable Under the EAP

The following expenditures are not subject to Federal reimbursement and will not be claimed:

1. EAP assistance payments to households not meeting the eligibility requirements under the State plan;

2. any portion of an EAP assistance payment which exceeds the amount set forth in the State plan;

3. expenditures for EAP and related administrative costs which exceed the amount allocated to the State by the Secretary;

4. expenditures for administering the State EAP plan which exceed 10% of the amount allocated by the Secretary to the State plan;

5. administrative costs which do not meet the requirements of 45 CFR 74 (Administration of grants), 45 CFR 205.150 (Cost allocation), and 45 CFR 205.160 (Non-expendable personal property);

6. costs due to awards made to applicants after June 30, 1980;

7. any expenditures which are not made in accordance with the State plan; and

The allowability of costs claimed for reimbursement under the EAP will be determined by the Secretary.

A State may appeal a determination that expenditures are not reimbursable under the EAP. Procedures for such appeals will be established by the Department.

E. Disregards

Payments made under the EAP program shall not be considered as income or resources under any other public or publicly assisted income tested program, except that they shall be taken into account in determining eligibility for the ECAP program.

F. Allowable Administrative Costs

Not more than 10% of the funds expended by the State will be claimed for administrative costs related to the EAP. Costs charged to the administration of the EAP will meet the requirements set forth in 45 CFR Part 74 (Administration of grants), 45 CFR 205.150 (Cost allocation), 45 CFR 205.160 (Non-expendable personal property), and the following criteria:

1. *Costs which do not require allocation*—those costs that result directly from carrying out the State plan and need no allocation.

2. *Costs which must be allocated*—those costs incurred for common or joint purposes not readily assignable to a process, function, or activity, and allocated to the administration of the State Plan in accordance with an approved cost allocation plan.

Any State agency having administrative costs chargeable to the EAP must have a cost allocation plan for allocating costs to the administration of the EAP approved by the Regional Director, Division of Cost Allocation, before any allocated costs can be allowed for Federal reimbursement. See Tab F for a sample format.

Any local agency having administrative costs chargeable to the EAP must have available for review a cost allocation plan showing the methods used for allocating the costs to the EAP, except in those instances where a local agency has an approved cost allocation plan or indirect cost rate. In these cases the local agency must execute an amendment to its approved plan.

If an agency, other than those local agencies referred to above, does not have a Federally approved cost allocation plan or indirect cost rate, it must establish one in order to claim administrative costs. The Division of Cost allocation of the Regional Office can be called upon for assistance.

Only those costs that are incurred by the State in administering its approved EAP plan, and which are not allocated to and claimed for Federal reimbursement under any other Federal program, may be claimed as a cost of administering the State plan.

Costs associated with the State or local agency's ongoing activities e.g., eligibility determination, redeterminations or case maintenance for any program other than EAP will not be reimbursed by EAP.

G. Accounting System

The State's designated agency, any other involved State agency, and, where applicable, any local agency, having costs chargeable to the EAP, will maintain an accounting system and supporting fiscal records adequate to audit and otherwise verify that the EAP assistance payments and administrative costs claimed for reimbursement meet Federal requirements.

H. Audits and Reviews

The State will perform an audit of the EAP administered under its approved State Plan. The operations of the State will be subject to review by the Social Security Administration and audit by the Audit Agency of the Department. The State will make available the records and documentation requested for review and audit.

I. Records

Records supporting an expenditure statement will be retained for 3 years from the date of submission of the expenditure statement and upon request be made available for review by Federal officials. The records will be retained beyond the 3 year period if findings from an audit or a financial review by the Department or the General Accounting Office have not been resolved.

1. For the EAP assistance payments, the records must provide at a minimum:

a. date of payment;

b. check number;

c. amount of payment;

d. payee;

e. identification of household (AFDC assistance unit for State Plan A) if different from payee (item d);

f. a cross reference between the energy allowance and the payment for the month or period establishing eligibility for the energy allowance payment (State Plan A and B only);

g. a reconciliation between those households receiving an assistance payment and those households receiving an energy allowance payment and the reason for any differences (State Plan A and B only).

These items may be modified and other items added as appropriate to provide support for assistance payments made under the State plan.

2. For the administrative costs which are charged to the EAP, the program records must provide, at a minimum:

a. Costs for compensation of personnel charged directly to EAP must be supported by time and attendance records. In addition, the costs charged to the EAP must be deducted from the appropriate pools and/or cost centers before such pools or cost centers are allocated to other programs.

b. Costs which do not require allocation:

1. date of payment;

2. check number;

3. amount of payment;

4. payee; and

5. expenditure classification (based on activities or object classification).

c. Expenditures which must be allocated must be supported by records providing the same information required in paragraph b above, and be supported by an approved cost allocation plan.

3. All claims for reimbursement of expenditures for either energy assistance payments or administration of the EAP will be supported by documentation which establish that the expenditures meet the requirement of Federal directives and the State plan.

J. Quality Assurance

For purposes of the EAP, AFDC Quality Control Regulations do not apply; however, States will exercise the same care in program administration as is required under the AFDC program.

K. Duplicate Payments

States are expected to take all necessary precautions to avoid making more than one energy assistance payment to an eligible assistance unit. Payments made to SSI recipients who also receive payments under the special $400 million allocation, and payments to households eligible for both SSI payments and EAP payments need not be considered duplicate payments. If a State's record system can accomplish this, it should be utilized. However, it is not anticipated that separate procedures will be set up for this one-time payment.

L. *Recovery of Erroneous Payments*

States may recover erroneous payments from recipients. (Erroneous payments would be those identified in Sections D1, 2, 3, 6, 7 of this Tab.) Whenever a State does recover erroneous payments, appropriate adjustments will be made in the State's report of expenditures.

M. *Safeguarding of Information*

The use or disclosure of information concerning recipients of EAP will be limited to purposes directly connected to the administration of assistance programs as provided in 45 CFR 205.50 (Safeguarding information).

N. *Review and Appeals Procedure*

Appeal and review procedures will be established by the State whereby any eligible person who has been denied an EAP or received an underpayment may file an appeal up to 30 days after the end of the period in which its EAP payments are made. Appeals must be decided upon, and corrective payments must be made, but in no case may payments be made after June 30, 1980.

The State will make known to all applicants procedures for review of the partial or complete denial of assistance under the program to any household. If the State has an existing process which includes the elements listed below, its continued use will satisfy the requirements of this policy. Procedures for reviewing denials of assistance will include:

1. Provisions for notifying the applicant in writing of the reasons for denial of assistance, that he/she may request a review of the denial and may submit additional information (in writing or orally) which the applicant believes would warrant a favorable determination;

2. Provisions for reviewing the denial of an application for assistance in a timely manner if such is requested by the applicant. This should include the specific assignment of responsibility to a senior level official other than the person making the initial determination;

3. Provisions for notifying the applicant in writing of the agency's final decision; and

4. The methods the agency will employ to publicize the existence of the appeal process.

O. *Funds Not Expended*

Funds not expended shall be returned to HEW.

P. *Outreach*

The State will provide outreach services to potential clients eligible for services.

Q. *Personnel Standards*

Assurances of compliance with merit system, equal opportunity, affirmative action, protection of civil rights and provisions for the handicapped are applicable as follows:

45 CFR Part 80

Part 84 (Letter, May 1977, Sec'y of HEW)

1 *Nondiscrimination*

Assurance is hereby given that in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the Regulations issued thereunder by the Department of Health, Education, and Welfare (45 CFR Parts 80 and 84), no individual shall, on the ground of race, color, national origin, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this plan.

The State agency has established and will maintain activity for which it receives methods of administration to assure that each program or Federal financial assistance will be operated in accordance with the preceding paragraph of this statement.

The State agency will amend its methods of administration from time to time as necessary to carry out the purposes for which this statement is given.

The State agency recognizes and agrees that Federal financial assistance to the State will be extended in consideration of, and in reliance on, the representations and agreements made in this statement, and that the United States shall have the right to seek administrative and judicial enforcement thereof.

Personnel Administration

45 CFR 205.200

2 *Standards of Personnel Administration*

Methods of personnel administration have been established and will be maintained in the State or local agency in conformity with Standards for a Merit System of Personnel Administration, 5 CFR Part 900, and any standards prescribed by the Office of Personnel Management pursuant to Sec. 208 of the Intergovernmental Personnel Act of 1970 as append Subpart F, Current law, regulations, and policies which provide assurance of conformity to Federal Merit System Standards are submitted in accordance with 5 CFR Part 900 for determination as to adequacy. Amendments will be submitted whenever necessary. Copies of the materials mentioned above will be furnished to the Regional Office of the Social Security Administration upon request.

Regulation: 45 CFR 205.200 (c)

3 *Affirmative Action Plan*

The State agency has implemented an affirmative action plan to assure equal employment opportunity in all aspects of personnel administration as specified in 45 CFR 70.4. The plan provides for specific action steps and timetables to assure such equal opportunity. The plan is available for review upon request.

Tab F

[To Be Forwarded to the Appropriate Regional DCA]

Amendment to the Approved Cost Allocation Plan

The [State Agency] in fullfilling its responsibilities under Tab E, General Administrative Requirements, as agreed to in its Energy Assistance Payment EAP Plan for FY 80 amends its approved cost allocation plan as follows:

1. A separate cost center(s) will be established to accumulate all administrative costs, direct and indirect, associated with administering the EAP activity.

2. The salaries and wages of those personnel whose only function is in support of the EAP will be directly charged to that activity.

3. The salaries and wages claimed against EAP for personnel who have duties and/or responsibilities in addition to the EAP will be supported by adequate time and attendance records that will support the change to EAP and reflect the individuals total activities.

4. Other reasonable and necessary support costs (e.g. travel, supplies, ADP services, etc.) associated with the EAP will be claimed and supported in a manner consistent with the method(s) set forth in the approved cost allocation plan for other programs/activities administered by the agency.

5. Other administrative support costs benefitting the EAP will be allocated to that activity in a manner consistent with that established and approved for other programs.

6. Appropriate credits will be made to those respective functions, activities cost pools or centers for those costs claimed against EAP.

7. All other requirements as set forth in the approved cost allocation plan are equally applicable to this amendment.

This amendment is effective *(not earlier than the enactment date of Pub. L. 96-126).*

Dated: ———.

Signature ———

Title ———

Approved:

Dated: ———.

Signature ———

Title ———

[FR Doc. 79-36960 Filed 11-29-79; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Policy for Cooperative Agreements for the Registration of Chemicals and Drugs for Fishery and Wildlife Uses

Correction

In FR Doc. 79-35669, published at page 66698, on Tuesday, November 20, 1979, on page 66699, in the first column, in the dates paragraph, "January 21, 1978", should be corrected to read "January 21, 1980".

BILLING CODE 1505-01-M

Geological Survey

Outer Continental Shelf (OCS) Orders

The U.S. Geological Survey published a notice in the Federal Register, Vol. 44, page 55670, on September 27, 1979, which announced that OCS Orders Nos. 1, 2, 3, 4, 5, 7, 8, and 12 for all areas of the OCS would be published during the week of October 22 through 26, 1979. These Orders were to have an effective date of December 1, 1979. Notice is hereby given that the effective date of these Orders is extended to January 1, 1980. This extension is necessary to

provide time to incorporate the final revisions of the regulations contained in Title 30 of the Code of Federal Regulations, Part 250, which were published in the Federal Register, Vol. 44, page 61886, on October 26, 1979. It was also necessary to extend the effective date of the revised Orders to follow the December 13 effective date of the final regulations. The revised Orders will be published prior to January 1, 1980.

H. William Menard,

Director, Geological Survey.

[FR Doc. 79-36990 Filed 11-29-79; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-52]

Certain Apparatus for the Continuous Production of Copper Rod; Commission Determination and Order

Introduction

The United States International Trade Commission conducted investigation No. 337-TA-52 pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) on the importation and sale of certain apparatus for continuous production of copper rod. The Commission determined that there are violations of the statute by Fried. Krupp GmbH and Krupp International, Inc., with regard to United States Letters Patent No. 3,317,994, Trade Secret No. 5, concerning the rod coiling apparatus, and Trade Secret No. 11, concerning certain features of the in-line cooling and cleaning pipe. The Commission determined that there is no violation of section 337 by Western Electric Company, American Telephone and Telegraph Company, and Nassau Recycle Corporation.

Determination

Having reviewed the evidentiary record in this matter, the Commission has determined:

1. That there are unfair methods of competition and unfair acts in the importation or sale of articles for the continuous production of copper rod with respect to (1) infringement of United States Letters Patent No. 3,317,994 by Fried. Krupp GmbH and Krupp International, Inc., (2) misappropriation of Trade Secret No. 5, concerning the rod coiling apparatus, by Fried. Krupp GmbH and Krupp International, Inc., and (3) misappropriation of Trade Secret No. 11, concerning certain features of the in-line cooling and cleaning pipe, by Fried. Krupp GmbH and Krupp International, Inc., and that the tendency of these unfair practices is to substantially injure an industry, efficiently and economically operated, in the United States;

2. That there is no violation of section 337 of the Tariff Act of 1930 by Western Electric Company, American Telephone and Telegraph Company and Nassau Recycle Corporation;

3. That the issuance of cease and desist orders pursuant to section 337(f), as set forth in the order below, is the appropriate means to remedy the respective patent and trade secret violations of section 337 which the Commission found to exist with respect to Fried. Krupp GmbH and Krupp International, Inc.;

4. That, after considering the effect of these cease and desist orders upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, these cease and desist orders should be imposed; and

5. That the bond provided for in subsection 337(g)(3) of the Tariff Act of 1930 (19 U.S.C. 1337(g)(3)) shall be in the amount of 25 per cent ad valorem (ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a)) of the imported articles.

Order

Accordingly, it is hereby ordered that:

1. Respondents Fried. Krupp GmbH and Krupp International, Inc., shall cease and desist from the importation into in the United States, or the sale to purchasers in the United States, of articles for the coninuous production of copper rod which are suitable for use in infringing—and are, in fact, subsequently so used with resulting infringement of—the method claimed by United States Letters Patent No. 3,317,994. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of publication in the Federal Register and on or before May 9, 1984, the date the aforesaid patent expires, except under license from Southwire Company and except as provided hereinafter by paragraph 4;

2. Respondents Fried. Krupp GmbH and Krupp International, Inc., shall cease and desist (a) from the importation into the United States, or the sale to purchasers in the United States, of articles for the continuous production of copper rod which incorporate in whole or in part the subject matter of Trade Secret No. 5, concerning the rod coiling apparatus and (b) from disclosing any of the subject matter of Trade Secret No. 5 in connection with such importation or sale. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption during the seven-year period beginning on the date this order is published in the Federal Register, except under license from Southwire Company and except as provided hereinafter by paragraph 4;

3. Respondents Fried. Krupp GmbH and Krupp International, Inc., shall cease and desist (a) from the importation into the United States, or the sale to purchasers in the United States, of articles for the continuous production of copper rod which articles incorporate in whole or in part the subject matter of Trade Secret No. 11, concerning certain aspects of the rod cooling and cleaning line, and (b) from disclosing any of the subject matter of Trade Secret No. 11 in connection with such importation or sale. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption during the five-year period beginning on the date this order is published in the Federal Register, except under license from Southwire Company and except as provided hereinafter by paragraph 4;

4. (a) Articles which are suitable for use in the practice of United States Letters Patent No. 3,317,994, (b) articles which incorporate in whole or in part the subject matter Trade Secret No. 5, concerning the rod coiling apparatus, and (c) articles which incorporate in whole or in part the subject matter Trade Secret No. 11, concerning certain features of the in-line cooling and cleaning pipe, are entitled to entry under bond in the amount of 25 percent ad valorem (ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a)) from the day after the day this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930 until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than sixty days after such day of receipt;

5. That, as an ancillary matter, paragraphs 1 and 3 of Order No. 70 of the Administrative Law Judge, dated January 19, 1979, relating to an alleged protective order violation in this proceeding, are hereby vacated;

6. That, in light of objections received from the parties, the matter proposed for admission into the record by counsel for Asarco, Inc., a non-party to this investigation, during the September 26, 1979, presentations before the

Commission concerning relief, bonding, and the public interest (marked for identification as Exhibit OA-5), is not admitted into the record in this investigation.

7. That this determination and order and the public versions of the cease and desist orders as well as teh confidential versions of the cease and desist orders concerning Trade Secret Nos. 5 and 11 will be served upon each party of record in this investigation. This determination and order and the public versions of the cease and desist orders will be published in the Federal Register and served upon the United States Department of Health, Education and Welfare, the United States Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury; and

8. That the United States International Trade Commission may amend this order at any time.

By order of the Commission.

Issued: November 23, 1979.

United States International Trade Commission, Washington, D.C. 20436

In the Matter of Certain Apparatus for the Continuous Production of Copper Rod, Investigation No. 337-TA-52. Order requiring Fried, Krupp GmbH and Krupp International, Inc., to cease and desist importing or selling articles for the continuous production of copper rod which articles are suitable for use in infringing—and are, in fact, subsequently so used with resulting infringement of—the method claimed by United States letters patent No. 3,317,994.

I. Definitions

The terms in quotations below shall be defined as shown for purposes of interpreting this Order:

"Commission" refers to the United States International Trade Commission.

"Krupp" refers to Fried, Krupp GmbH and Krupp International, Inc.

"United States" refers to the fifty states, the District of Columbia, and Puerto Rico.

II. Conduct Prohibited

Krupp shall not import into the United States, or sell to purchasers in the United States, articles for the continuous production of copper rod which are suitable for use in infringing—and are, in fact, subsequently so used with resulting infringement of—the method claimed by United States Letters Patent No. 3,317,994. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of publication in the Federal Register and on or before May 9, 1984, the date the aforesaid patent expires, except under license from Southwire Company and except under bond during the 60-day period of presidential review, as determined by the Commission pursuant to section 337(g) of the Tariff Act of 1930. Importation into the United States and sale to purchasers in the United States shall, for the purposes of this Order, be deemed to have ceased when such articles have been shipped into the United States, the article or articles have been set up in working order, and commercial production of copper rod has begun.

III. Reporting

Krupp shall report to the Commission: all sales, exports, and shipments of articles for the continuous production of copper rod to purchasers in the United States; all letters of intent, whether written, oral, or whatever form, to enter into contracts to sell, export or ship articles for the continuous production of copper rod to purchasers in the United States; all contracts, whether written, oral, or whatever form, to sell, export, or ship articles for the continuous production of copper rod to purchasers in the United States; and all delivery orders, bills of lading, and all other documents relating to the sale, export, or shipment of articles for the continuous production of copper rod to purchasers in the United States. The first such report under this paragraph shall be due 90 days after the publication of this Order in the Federal Register. Subsequent reports shall be due on November 30, 1980, November 30, 1981, November 30, 1982, November 30, 1983, and a final report shall be due on May 9, 1984. Forms for such reports required by this paragraph will be timely provided by the Commission. Failure to report shall constitute a violation of this Order.

IV. Compliance and Inspection

Krupp shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph III of this Order.

V. Confidentiality

Information obtained by the means provided in paragraphs III and IV above will only be made available to the Commission or its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than another duly authorized representative of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten days prior notice to Krupp by service of such notice on Krupp's prinicpal office in the United States.

VI. Enforcement

Violation of this Order may result in (1) the revocation of this Order and the permanent exclusion of the articles concerned pursuant to section 337(d), (2) temporary exclusion of impending importations of the articles concerned pursuant to section 337(e) or (3) an action for civil penalties in accordance with the provisions of section 337(f) and such other action as the Commission may deem appropriate. In determining whether Krupp is in violation of this Order, the Commission may infer facts adverse to Krupp if it fails to provide adequate or timely information.

VII. Term

This Order expires, unless modified or revoked by the Commission, with respect to articles entered, or withdrawn from warehouse for consumption on or after May 10, 1984.

VIII. Scope of Order

No person not specifically named in this Order is subject to this Order.

By order of the Commission:

Issued: November 23, 1979.

Public Version

United States International Trade Commission, Washington, D.C. 20436

In the Matter of Certain Apparatus for the Continuous Production of Copper Rod, Investigation No. 337-TA-52. Order requiring Fried, Krupp GMBH and Krupp International, Inc., to cease and desist from importing or selling articles for the continuous production of copper rod which incorporate Trade Secret No. 5 and to cease and desist from disclosing Trade Secret No. 5 in connection with such importation or sale.

I. Definitions

The terms in quotations below shall be defined as shown for purposes of interpreting this Order:

"Commission" refers to the United States International Trade Commission.

"Krupp" refers to Fried. Krupp GmbH. and Krupp International, Inc.

"United States" refers to the fifty states, the District of Columbia, and Puerto Rico.

II. Trade Secret No. 5

Trade Secret No. 5 concerns the rod coiling apparatus and consists of confidential business information.

III. Conduct Prohibited

Krupp shall not import into the United States, or sell to purchasers in the United States, articles for the continuous production of copper rod which incorporate in whole or in part the subject matter of Trade Secret No. 5, concerning the rod coiling apparatus. In addition, Krupp shall not disclose the subject matter of Trade Secret No. 5, concerning the rod coiling apparatus, to any person in connection with such an importation or sale. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption during the seven-year period beginning on the date this order is published in the Federal Register, except under license from Southwire Company and except bond during the 60-day period of presidential review, as determined by the Commission pursuant to section 337(g) of the Tariff Act of 1930. Importation into the United States and sale to purchasers in the United States shall, for the purposes of this Order, be deemed to have ceased when such article or articles have been shipped into the United States, the article or articles have been set up in working order, and commercial production of copper rod has begun.

IV. Reporting.

Krupp shall report to the Commission: all sales, exports, and shipments of articles for the continuous production of copper rod to purchasers in the United States; all letters of intent, whether written, oral, or whatever form, to enter into contracts to sell, export or ship articles for the continuous production of copper rod to purchasers in the United States; all contracts, whether written, oral, or whatever form, to sell, export, or ship articles for the continuous production of copper rod to purchasers in the United States; and all delivery orders, bills of lading, and all other documents relating to the sale, export, or shipment of articles for the continuous production of copper rod to purchasers in the United States. The first such report under this paragraph shall be due 90 days after the publication of this Order in the Federal Register. Subsequent reports shall be due on an annual basis on November 30, 1980, November 30, 1981, November 30, 1982, November 30, 1983, November 30, 1984, November 30, 1985, and a final report shall be due on November 30, 1986. Forms for such reports required by this paragraph will be timely provided by the Commission. Failure to report shall constitute a violation of this Order.

V. Compliance and Inspection

Krupp shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order.

VI. Confidentiality

Information obtained by the means provided in paragraphs IV and V above will only be made available to the Commission or its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than another duly authorized representative of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten days prior notice to Krupp by service of such notice on Krupp's principal office in the United States.

VII. Enforcement.

Violation of this Order may result in (1) the revocation of this Order and the permanent exclusion of the articles concerned pursuant to section 337(d), (2) temporary exclusion of impending importations of the articles concerned pursuant to section 337(e), or (3) an action for civil penalties in accordance with the provisions of section 337(f) and such other action as the Commission may deem appropriate. In determining whether Krupp is in violation of this Order, the Commission may infer facts adverse to Krupp if it fails to provide adequate or timely information.

VIII. Term

This Order expires, unless modified or revoked by the Commission, with respect to articles entered or withdrawn from warehouse, for consumption, seven years after the date this order is published in the Federal Register.

IX. Scope of Order

No person not specifically named in this Order is subject to this Order.

By order of the Commission.

Issued: November 23, 1979.

Public Version

United States International Trade Commission, Washington, D.C. 20436

In the Matter of Certain Apparatus for the Continuous Production of Copper Rod, Investigation No. 337-TA-52. Order requiring Fried. Krupp GMBH, and Krupp International, Inc., to cease and desist from importing or selling articles for the continuous production of copper rod which incorporate trade secret No. 11 and to cease and desist from disclosing trade secret No. 11 in connection with such importation or sale.

I. Definitions

The terms in quotations below shall be defined as shown for purposes of interpreting this Order:

"Commission" refers to the United States International Trade Commission.

"Krupp" refers to Fried. Krupp GmbH. and Krupp International, Inc.

"United States" refers to the fifty states, the District of Columbia, and Puerto Rico.

II. Trade Secret No. 11

Trade Secret No. 11 concerns certain features of the in-line cooling and cleaning pipe and consists of confidential business information.

III. Conduct Prohibited

Krupp shall not import into the United States, or sell to purchasers in the United States, articles for the continuous production of copper rod which incorporate in whole or in part the subject matter of Trade Secret No. 11, concerning certain features of the in-line cooling and cleaning pipe. In addition, Krupp shall not disclose the subject matter of Trade Secret No. 11, concerning certain features of the in-line cooling and cleaning pipe, to any person in connection with such an importation or sale. This order shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption during the five-year period beginning on the date this order is published in the Federal Register, except under license from Southwire Company and except under bond during the 60-day period of presidential review, as determined by the Commission pursuant to section 337(g) of the Tariff Act of 1930. Importation into the United States and sale to purchasers in the United States shall, for the purposes of this Order, be deemed to have ceased when such article or articles have been shipped into the United States, the article or articles have been set up in working order, and commercial production of copper rod has begun.

IV. Reporting

Krupp shall report to the Commission: all sales, exports, and shipments of articles for the continuous production of copper rod to purchasers in the United States; all letters of intent, whether written, oral, or whatever form, to enter into contracts to sell, export or ship articles for the continuous production of copper rod to purchasers in the United States; all contracts, whether written, oral, or whatever form, to sell, export, or ship articles for the continuous production of copper rod to purchasers in the United States; and all delivery orders, bills of lading, and all other documents relating to the sale, export, or shipment of articles for the continuous production of copper rod to purchasers in the United States. The first such report under this paragraph shall be due 90 days after the publication of this Order in the Federal Register. Subsequent reports shall be due on November 30, 1980, November 30, 1981, November 30, 1982, November 30, 1983, and a final report shall be due on November 30, 1984. Forms for such reports required by this paragraph will be timely provided by the Commission. Failure to report shall constitute a violation of this Order.

V. Compliance and Inspection

Krupp shall furnish or otherwise make available to the Commission or its authorized representative, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents in its possession or control for the purpose of verifying any matter contained in the reports required under paragraph IV of this Order.

VI. Confidentiality

Information obtained by the means provided in paragraphs IV and V above will only be made available to the Commission or its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representatives of the Commission to any person other than another duly authorized representative of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten days prior notice to Krupp by service of such notice on Krupp's principal office in the United States.

VII. Enforcement

Violation of this Order may result in (1) the revocation of this Order and the permanent exclusion of the articles concerned pursuant to section 337(d), (2) the temporary exclusion of impending importations of the articles concerned pursuant to section 337(e), or (3) an action for civil penalties in accordance with the provisions of section 337(f) and such other action as the Commission may deem appropriate. In determining whether Krupp is in violation of this Order, the Commission may infer facts adverse to Krupp if it fails to provide adequate or timely information.

VIII. Term

This Order expires, unless modified or revoked by the Commission, with respect to articles entered or withdrawn from warehouse, for consumption, five years after the date this order is published in the Federal Register.

IX. Scope of Order

No person not specifically named in this Order is subject to this Order.

By order of the Commission.

Issued: November 23, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-36967 Filed 11-29-79; 8:45 am]

BILLING CODE 7020-02-M

[225-1]

Competitive Status of Certain Benzenoid Chemical Imports From Switzerland and the European Community

AGENCY: United States International Commission.

ACTION: Notice is hereby given that the United States International Trade Commission, at the request of the Special Representative for Trade Negotiations, has extended until December 10, 1979, the period for receipt of written comments on its preliminary determinations with respect to lists of benzenoid chemicals and products notified to the United States by Switzerland and the European Community.

Notice of the Commission's investigation was published in the Federal Register of September 26, 1979 (44 FR 55442). Notices of the Commission's preliminary determinations with respect to the benzenoid chemicals and products in question were published in the Federal Register of November 16 and 27, 1979 (44 FR 66080 and 67736, respectively).

Issued: November 27, 1979.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-36968 Filed 11-29-79; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Notice of Second Fiscal Year 1980 Competitive Graduate Research Fellowship Program

Notice is hereby given that, pursuant to the authority contained in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3742(b)(5), the Law Enforcement Assistance Administration is conducting the second Graduate Research Fellowship Program Competition for fiscal year 1980.

Fellowship grants are awarded to universities which administer the awards in behalf of the fellows. The fellowship grant provides funds for a one-year period to support the fellow and dependents, major project costs, and some university fees. The maximum grant is $10,000.

Doctoral candidates in crime-related fields of study who have finished their course work and are prepared to work on their dissertations are eligible to compete for the limited number of fellowships. A candidate must submit to LEAA a brief (five pages) concept paper describing the project, a proposed budget, and a letter of support from the sponsoring university. The concept paper should include the following: a statement of the problem, objectives of the study, description of the methodology, policy implications of the findings, time schedule of the study, and assurances of needed cooperation from outside sources. An original and two copies of each of these documents should be submitted. Concept papers and related documents will be reviewed by a panel of criminal justice academicians and LEAA specialists. Proposals will be judged on the basis of originality and need for the research, the quality and feasibility of the methodology, the practical applicability of the findings, and the applicant's qualifications for the project. Proposals which are especially encouraged would be those that contribute to improved research and evaluation methodologies, the improvement of criminal justice services, or criminal justice manpower planning and development.

The universities enrolling those candidates who are selected following the two levels of review will be invited to submit formal applications. Final selection of fellows will be made following the review of formal applications.

The deadline for submission of concept papers for the second fiscal year 1980 Graduate Research Fellowship Competition is January 2, 1980. Awards will be made in July and August 1980. All awards are contingent upon Congressional appropriation and authorization for the Graduate Research Fellowship Program.

Complete program guidelines can be obtained from the Graduate Research Fellowship Program, Law Enforcement Assistance Administration, 633 Indiana Avenue N.W., Washington, D.C. 20531. Telephone (301) 492-9144.

J. Price Foster,

Director, Office of Criminal Justice Education and Training.

November 20, 1979.

[FR Doc. 79-36883 Filed 11-29-79; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-6109 and TA-W-6111]

Allegheny Buffalo China, Inc. and Buffalo China, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 27, 1979 in response to a worker petition received on September 24, 1979 which was filed on behalf of workers and former workers producing holloware (cups and bowls) at Allegheny Buffalo China, Incorporated, Clarendon, Pennsylvania (TA-W-6109) and chinaware at Buffalo China, Incorporated, Buffalo, New York (TA-W-6111). It is concluded that all of the requirements have been met.

U.S. imports of commercial chinaware increased in the first eight months of 1979 compared to the same 1978 period. The ratio of imports to domestic shipments in dollars increased in the first eight months of 1979 compared to the same 1978 period. An analysis of the industry indicated that commercial chinaware can be considered directly competitive with most types of dinnerware. This similarity of products and a loophole in the tariff schedule has allowed importers to bring commercial chinaware items into the U.S. under an earthenware category which imposes a lower duty on the imported items.

U.S. imports of earthen table and kitchen articles, and earthen dinnerware decreased absolutely in the first eight months of 1979 compared to the same 1978 period. The ratio of imports to domestic shipments of earthen table and kitchen articles, however, remained over 200 percent and over 100 percent for

earthen dinnerware in the first eight months of 1979.

The Department conducted a survey of some of the customers purchasing chinaware produced by Buffalo China, Incorporated and Allegheny Buffalo China, Incorporated. Some of the customers indicated they reduced purchases from Buffalo China and Allegheny Buffalo China and increased purchases from foreign sources in the first three quarters of 1979 compared to the same 1978 period. Several customers also indicated that their future purchases of chinaware would come from foreign sources.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with holloware and chinaware produced at Allegheny Buffalo China, Incorporated, Clarendon, Pennsylvania and Buffalo China, Incorporated, Buffalo, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Allegheny Buffalo China, Incorporated, Clarendon, Pennsylvania who became totally or partially separated from employment on or after July 29, 1979 and all workers of Buffalo China, Incorporated, Buffalo, New York who became totally or partially separated from employment on or after August 5, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November, 1979

Gloria S. Pratt,

Director, Office of Foreign Economic Policy.

[FR Doc. 79-36905 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6136]

Anaconda Industries, Brass Division, Sheet Copper Department; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on October 2, 1979 in response to a worker petition received on September 27, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing fin copper and tube brass at Anaconda Industries, Brass Division, Sheet Copper Department, Kenosha, Wisconsin. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of copper sheet and strip, and copper alloy sheet and strip decreased during the first half of 1979 compared to the first half of 1978.

None of the surveyed customers of Anaconda Industries' Kenosha plant decreased purchases of fin copper and tube brass from Anaconda and increased purchases of imports during January-September 1979 compared to the nine operational months of 1978.

Conclusion

After careful review, I determine that all workers of Anaconda Industries, Brass Division, Sheet Copper Department, Kenosha, Wisconsin are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36907 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6048]

Bethlehem Steel Corp.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for workers adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 19, 1979 in response to a worker petition received on September 14, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel products at the Seattle, Washington plant of Bethlehem Steel Corporation, Bethlehem, Pennsylvania. The investigation revealed that the plant primarily produces concrete reinforcing bars, hot rolled carbon steel bars, structural shapes, carbon steel plate, railroad spikes and industrial fasteners. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Production of concrete reinforcing bars, carbon steel plate, industrial fasteners and railroad spikes at the Seattle plant increased in quantity from 1977 to 1978 and in the first nine months of 1979 compared to the same period in 1978.

Total employment at the Seattle plant increased from 1977 to 1978, and in the first nine months of 1979 compared to the same period in 1978. Employment increased in each quarter of 1978 and in the first three quarters of 1979 compared to the respective quarter of the previous year.

U.S. imports of each of the categories decreased both absolutely and relative to domestic shipments in the first six months of 1979 compared to the same period in 1978.

Conclusion

After careful review, I determine that all workers of the Seattle, Washington plant of Bethlehem Steel Corporation engaged in employment related to the production of concrete reinforcing bars, carbon steel plate, railroad spikes and industrial fasteners are denied eligiblility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers previously certified under TA-W-2236 are not affected by the new determination.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36908 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

Blue Ridge Shirt Manufacturing Co., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 24, 1979 in response to worker petitions received on September 19, 1979 which were filed on behalf of workers and former workers producing the specified garments at the following firms affiliated with Washington Manufacturing Company.

	Firm	Location	Products
TA-W-			
6090	Blue Ridge Shirt Manufacturing Co.	Fayetteville, TN	Men's woven shirts.
6091	Dixie Manfacturing Co.	Columbia, TN	Ladies' jeans and sportswear.
6093	Heavy Duty Manufacturing Co.	Gainesboro, TN	Men's knit shirts.
6094	Kentucky Pants Co	Glasgow, KY	Men's jeans.
6095	Linden Apparel Corp., plant No. 1.	Linden, TN	Men's jeans and overalls.
6096	Linden Apparel Corp., plant No. 2.	Linden, TN	Ladies' jeans
6097	Lebanon Garment Co	Lebanon, TN	Men's jeans.
6100	Turner Manufacturing Co.	Goodlettsville, TN	Ladies' sportswear.
6101	Washington Overall Manufacturing Co.	Scottsville, KY	Men's jeans.

In the following determinations, without regard to whether any of the other criteria have been met for workers at Blue Ridge Shirt Mfg. Co., Fayetteville, TN; Dixie Mfg. Co., Columbia, TN; and Heavy Duty Mfg. Co., Gainesboro, TN the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Production of men's shirts at Blue Ridge Shirt Mfg. Co., Fayetteville, TN increased in the second half of 1978 compared with the second half of 1977 and increased in the first eight months of 1979 compared with the like period of 1978. The quarter to quarter decline that occurred was due to normal business fluctuations.

Average employment of workers of Dixie Manufacturing Co., Columbia, TN did not decline in the second half of 1978 compared with the second half of 1977. Average employment increased in the first eight months of 1979 compared with the like period of 1978. Average employment increased in each quarter compared with the previous quarter from July 1978 through June 1979.

Production of men's shirts at Heavy Duty Manufacturing Co., Gainesboro, TN increased in each quarter in 1978 compared with the respective like quarters of 1977. Average employment of workers at the company remained the same in the first eight months of 1979 compared with the like period of 1978.

For all workers producing men's jeans and overalls at Kentucky Pants Co., Glasgow, KY; Linden Apparel Corp., Plant #1, Linden, TN; Lebanon Garment Co., Lebanon, TN; and Washington Overall Manufacturing Co., Scottsville, KY all of the criteria have been met.

U.S. imports of men's jeans and dungarees and men's and boys' dress and sport trousers and shorts increased absolutely and relative to domestic production from 1977 to 1978.

The Department surveyed customers of the jeans sold by Washington Manufacturing Company. The survey indicated that customers increased purchases of imported men's jeans while decreasing purchases from Washington Manufacturing from 1977 to 1978.

For all workers producing ladies' jeans at Linden Apparel Corp., Plant #2, Linden, TN and ladies' blouses at Turner Mfg. Co., Goodlettsville, TN all of the criteria have been met.

U.S. imports of women's, misses' and children's slacks and shorts, and shirts and blouses increased absolutely and relatively from 1977 to 1978.

The Department surveyed customers of the ladies' jeans and blouses sold by Washington Manufacturing Company. The survey indicated that customers increased purchases of imported ladies' jeans and blouses while decreasing purchases from Washington Manufacturing in 1978 compared with 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the specified garments produced at the companies listed below contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of the following companies who became totally or partially separated from employment on or after the respective impact dates and before the specified termination dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

	Company	Location	Products	Impact date	Termination date
TA-W-					
6094	Kentucky Pants Co	Glasgow, KY	Men's jeans	Sept. 7, 1978	Feb. 17, 1979.
6095	Linden Apparel Corp., plant No. 1	Linden, TN	Men's jeans and overall	Sept. 7, 1978	Apr. 14, 1979.
6096	Linden Apparel Corp., plant No. 2	Linden, TN	Ladies' jeans	Sept. 7, 1978	Mar. 10, 1979.
6097	Lebanon Garment Co	Lebanon, TN	Men's jeans	Sept. 7, 1978	
6100	Turner Manufacturing Co.	Goodlettsville, TN	Ladies' blouses	Sept. 7, 1978	Mar. 18, 1979.
6101	Washington Overall manufacturing Co	Scottsville, KY	Men's jeans	Sept. 7, 1978	Feb. 17, 1979.

It is further determined that all workers of Blue Ridge Shirt Manufacturing Company, Fayetteville, Tennessee; Dixie Manufacturing Company, Columbia, Tennessee; and Heavy Duty Manufacturing Company, Gainesboro, Tennessee are denied eligibility for adjustment assistance.

Signed at Washington, D.C. this 23rd day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36910 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6103 and TA-W-6103-A]

Button Cutters, Inc., and Pearline Dyers, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 25, 1979 in response to a worker petition received on September 21, 1979 which was filed on behalf of workers and former workers engaged in manufacturing and secondary cutting of plastic buttons at Button Cutters, Incorporated, New York, New York (TA-W-6103). The investigation was expanded to include workers and former workers engaged in dyeing and polishing of plastic buttons at Pearline Dyers, Incorporated, New York, New York (TA-W-6103-A). It is concluded that all of the requirements have been met.

U.S. imports of buttons increased in dollar value in 1978 from 1977 and increased in January-June 1979 compared to the like period in 1978.

A survey conducted by the U.S. Department of Commerce revealed that some customers reduced orders with Button Cutters and Pearline Dyers and increased purchases of imports in 1978 from 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with plastic buttons produced at Button Cutters, Incorporated and Pearline Dyers, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Button Cutters, Incorporated, New York, New York (TA-W-6103) and all workers of Pearline Dyers, Incorporated, New York, New York (TA-W-6103-A) who became totally or partially separated from employment on or after December 22, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of November 1979.

Gloria S. Pratt,

Director, Office of Foreign Economic Policy

[FR Doc. 79-36911 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6113, 6217, and 6218]

Farama Manufacturing Co., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on September 27, 1979, and October 17, 1979, in response to worker petitions received on September 11, 1979 and October 15, 1979 respectively, which were filed on behalf of workers and former workers producing ladies' sportswear at Farama Manufacturing Co., Inc. (TA-W-6113), Best Ever Fashions, (TA-W-6217), and Gaiety Sportswear, Inc. (TA-W-6218), Springfield Gardens, New York. The investigation revealed that Farama Manufacturing Co., and Best Ever Fashions were wholly owned subsidiaries of Gaiety Sportswear, Inc. Best Ever Fashions was located in New York, New York; Farama Manufacturing Co. and Gaiety Sportswear, Inc. were located in Springfield Gardens, New York. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's slacks and shorts, blouses and shirts, coats and jackets, and skirts all increased in quantity and relative to domestic production from 1977 to 1978.

The Department of Commerce conducted a survey of customers of Gaiety Sportswear, Inc. The survey revealed that, from 1977 to 1978, customers decreased purchases of ladies' sportswear from Gaiety and increased purchases of imported ladies' sportswear.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' pants, blouses, jackets and skirts produced at Farama Manufacturing Co., Best Ever Fashions and Gaiety Sportswear, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Farama Manufacturing Co., Springfield Gardens, New York; Best Ever Fashions, New York, New York, and Gaiety Sportswear, Inc., Springfield Gardens, New York who became totally or partially separated from employment on or after December 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36912 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6063]

General Electric Co., Service Block Cord Set Department, Providence, R.I., Plant; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 20, 1979 in response to a worker petition received on September 17, 1979 which was filed on behalf of workers and former workers producing electrical extension cords at the Service Block Cord Set Department of the Providence, R.I. plant of General Electric Company. It is concluded that all of the requirements have been met.

U.S. imports of extension cords increased in value in 1978 from 1977 and during January-June 1979 compared to January-June 1978.

In September 1979 production of electrical extension cords was transferred from the Service Block Cord Set Department of the Providence, R.I. plant to a plant operated by General Electric Company in Nogales, Mexico. The Service Block Cord Set Department closed September 30, 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with electrical extension cords produced by the Service Block Cord Set Department of the Providence, R.I. plant of General Electric Company contributed importantly to the decline in sales or production and to the total or partial separation or workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Service Block Cord Set Department of the Providence, R.I. plant of General Electric Company who became totally or partially separated from employment on or after August 20, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36913 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6055]

Genesco, Inc., Footwear Sector; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 19, 1979 in response to a worker petition received on September 13, 1979 which was filed on behalf of workers and former workers producing uppers for men's casual shoes at the Tullahoma, Tennessee plant of the Footwear Sector of Genesco, Incorporated. The investigation revealed that the plant produces primarily uppers for men's and women's shoes. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear, except athletic, increased relatively in the first half of 1979 compared with the first half of 1978.

U.S. imports of women's nonrubber footwear, except athletic, increased absolutely and relative to domestic production from 1977 to 1978 and in the first half of 1979 compared with the like period of 1978.

Genesco's Tullahoma plant produces shoe uppers which are incorporated into finished shoes at the other Genesco footwear plants. Genesco increased its imports of finished shoes in 1978 compared with 1977 and in the first three quarters of 1979 compared with the like period of 1978. The company substantially increased its reliance on imports of footwear in both periods. Company plans call for a continued increase in its reliance on imports.

Conclusion

After careful review of the facts obtained in the investigation, I conclude the increases of imports of articles like or directly competitive with the men's and women's shoes produced at the Footwear Sector of Genesco, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Tullahoma, Tennessee plant of Genesco, Incorporated, Footwear Sector, who became totally or partially separated from employment on or after November 25, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

[FR Doc. 79-36914 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6092]

Golia Dress Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of elgibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 24, 1979 in response to a worker petition received on September 19, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's skirts and blouses at Golia Dress Company, New Haven, Connecticut. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's skirts increased absolutely and relative to domestic production in 1978 compared with 1977.

U.S. imports of women's, misses' and children's blouses and shirts increased both absolutely and relative to domestic production in 1978 compared with 1977.

The Department surveyed the manufacturer for whom Golia Dress Company did contract work. That manufacturer reported that it had declining sales of women's skirts and blouses during the period under investigation. Customers of that manufacturer who were surveyed reported that they had decreased purchases of women's skirts and blouses from the manufacturer and increased their reliance on foreign sources for similar items during the relevant period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' skirts and blouses produced at Golia Dress Company, New Haven, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Golia Dress Company, New Haven, Connecticut who became totally or partially separated from employment on or after September 7, 1978 are elgible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 36915 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6078 and 6087]

Hilda Dress Co., Inc., and Siege's Fashions, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the

results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of elgibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 17, 1979 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing women's dresses at Hilda Dress Company, Incorporated and Siege's Fashions, Incorporated, Waterbury, Connecticut. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's and misses' dresses decreased absolutely in the first half of 1979 compared to the same period of 1978. The ratio of imports to domestic production of dresses was below 5 percent in 1977 and 1978.

A survey of the manufacturer which accounts for a large proportion of the subject firms' contracts revealed that the manufacturer does not purchase imported dresses and does not employ offshore contractors to produce dresses. A survey of the customers of this manufacturer revealed that imports declined as a percentage of the customers' total purchases of dresses in 1978 compared to 1977 and in the first eight months of 1979 compared to the same period of 1978.

Conclusion

After careful review, I determine that all workers of Hilda Dress Company, Incorporated and Siege's Fashions, Incorporated, Waterbury, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-36916 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6075]

I. Dibner and Brother, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 17, 1979 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing women's dresses at I. Dibner and Brother, Incorporated, Waterbury, Connecticut. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's and misses' dresses decreased absolutely in the first half of 1979 compared to the same period of 1978. The ratio of imports to domestic production of dresses was below 5 percent in 1977 and 1978.

A survey of the manufacturer which accounts for a large proportion of the subject firm's contracts revealed that the manufacturer does not purchase imported dresses and does not employ offshore contractors to produce dresses. A survey of the customers of this manufacturer revealed that imports declined as a percentage of the customers' total purchases of dresses from 1977 to 1978 in the first eight months of 1979 compared to the same period of 1978.

Conclusion

After careful review, I determine that all workers of I. Dibner and Brother, Incorporated, Waterbury, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36917 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6079]

I & J Dress Company, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 17, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at I & J Dress Company, Incorporated, Bridgeport, Connecticut. The investigation revealed that I & J Dress Company is a contractor that produces primarily women's dresses. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of women's and misses' dresses decreased in the first half of 1979 compared with the first half of 1978. The ratio of imports to domestic production remained less than 5.0 percent in 1977 and 1978.

A survey of the manufacturer which accounts for a large proportion of the subject firm's contracts revealed that the manufacturer does not purchase imported dresses and does not employ offshore contractors to produce dresses. A survey of the customers of the manufacturer revealed that imports as a percentage of the customers' total purchases of dresses remained low and relatively unchanged in 1978 compared with 1977 and decreased in the first half of 1979 compared with the first half of 1978.

Conclusion

After careful review, I determine that all workers of I & J Dress Company, Incorporated, Bridgeport, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of November 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-36918 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6047]

Inland Shoe Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 19, 1979 in response to a worker petition received on September 14, 1979 which was filed on behalf of workers and former workers producing men's, women's and children's vinyl shoes and women's casual canvas shoes at the Advance Inland Shoe Company, Advance, Missouri. The investigation revealed that the plant produces primarily children's dress and play shoes, women's casual, jogging and golf shoes, and men's and women's bowling shoes. The investigation also revealed that the correct name of the subject firm is Inland Shoe Company. It is concluded that all of the requirements have been met.

U.S. imports of children's nonrubber footwear, except athletic, increased absolutely and relative to domestic production in the first half of 1979 compared with the first half of 1978.

U.S. imports of women's and misses' nonrubber footwear, except athletic, increased absolutely and relatively in 1978 compared with 1977 and in the first half of 1979 compared with the like period of 1978.

U.S. imports of rubber/fabric footwear increased absolutely and relatively in 1978 compared with 1977.

U.S. imports of athletic footwear increased absolutely and relatively in the first half of 1979 compared with the like period of 1978.

The Department surveyed customers of Inland Shoe Manufacturing Company. Survey respondents accounting for a significant proportion of Inland's decline in sales during the first three quarters of 1979 indicated that they increased purchases of imported footwear while decreasing purchases of like products from Inland.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the footwear produced at Inland Shoe Company, Advance, Missouri contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Inland Shoe Company, Advance, Missouri, including warehouse facilities, who became totally or partially separated from employment on or after February 3, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36919 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6140]

Jamp Manufacturing, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on October 2, 1979, in response to a worker petition received on September 27, 1979, which was filed on behalf of workers and former workers producing children's clothes at Jamp Manufacturing, Incorporated, Plainfield, New Jersey. The investigation revealed that the plant produces primarily girls' blouses. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's blouses and shirts increased both absolutely and relative to domestic production from 1977 to 1978.

The Department conducted a survey of the sole manufacturer that contracted work with Jamp Manufacturing, Incorporated. The survey revealed that this manufacturer closed permanently in March, 1979. A survey conducted with the manufacturer's major customers revealed that the majority of customers increased purchases of imported blouses and decreased purchases from the manufacturer from 1977 to 1978 and in the first four months of 1979 compared to the like period in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with girls' blouses produced at Jamp Manufacturing, Incorporated, Plainfield, New Jersey, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Jamp Manufacturing, Incorporated, Plainfield, New Jersey who became totally or partially separated from employment on or after November 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36920 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6125]

Jody Juniors, Inc.; Termination of Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 1, 1979, in response to a worker petition received on September 18, 1979, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers

producing ladies' dresses and ladies' sportswear at Jody Juniors, Incorporated, New York, New York. The investigation revealed that ladies' sportswear included jackets, skirts, blouses, vests and slacks.

During the course of the investigation, it was established that all workers of Jody Juniors, Incorporated, were separated from employment in April 1978. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is September 6, 1979, and, thus, workers terminated prior to September 6, 1978, are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation therefore terminated.

Signed at Washington, D.C., this 16th day of November 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-36921 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6163]

Jo-El Manufacturing, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on October 9, 1979, in response to a worker petition received on October 2, 1979, which was filed on behalf of workers and former workers producing ladies' dresses and skirts at Jo-El Manufacturing, Inc., Brooklyn, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

From 1977 to 1978 and in the January–July period of 1979, compared with the same period in the previous year, company sales of dresses and skirts increased. Average monthly employment at the plant also increased in the same periods. On August 18, 1979, all the machinery was stolen from the plant and the company closed at that time.

Conclusion

After careful review, I determine that all workers of Jo-El Manufacturing, Inc., Brooklyn, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of November 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-36922 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6080]

K-Way Manufacturing Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 21, 1979, in response to a worker petition received on September 17, 1979, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's and children's outerwear at K-Way Manufacturing Company, Moundville, Alabama. The investigation revealed that the plant primarily produces women's coats. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to domestic production in 1978 compared to 1977. The ratio of imports to domestic production was 69.3 percent in 1978.

Some of the coats produced by K-Way Manufacturing were sold to retail stores through an affiliated firm, and some were sold directly to retail stores. A Department of Labor survey revealed that some customers decreased purchases from K-Way's affiliate during the period under investigation while increasing their purchases of imported women's coats.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats produced at K-Way Manufacturing Company, Moundville, Alabama, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of K-Way Manufacturing Company, Moundville, Alabama, who became totally or partially separated from employment on or after September 10, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36923 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6027]

Lebanon Steel Foundry; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 17, 1979, in response to a worker petition received on September 11, 1979, which was filed by the United Steelworkers of America on behalf of workers and former workers producing castings at Lebanon Steel Foundry, Lebanon, Pennsylvania. In the following determination, at least one of the criteria has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Sales and production declines at Lebanon Steel Foundry in 1978 occurred because of a six month strike at the firm.

A survey of customers of Lebanon Steel Foundry was conducted by the Department. Survey results show that responding customers, in the aggregate, reduced their total purchases of imported castings while increasing purchases from Lebanon Steel Foundry during 1979. Customers who decreased purchases from Lebanon Steel Foundry while increasing purchases of imports account for an insignificant percentage of total sales during 1979.

Conclusion

After careful review, I determine that all workers of Lebanon Steel Foundry, Lebanon, Pennsylvania, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36924 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6081, 6082 and 6083]

Liela Dress Company, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 17, 1979 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing women's dresses at the three Liela Dress facilities. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's and misses' dresses decreased absolutely in the first half of 1979 compared to the same period of 1978. The ratio of imports to domestic production of dresses was below 5 percent in 1977 and 1978.

A survey of the manufacturer which accounts for a large proportion of the subject firms' contracts revealed that the manufacturer does not purchase imported dresses and does not employ off-shore contractors to produce dresses. A survey of the customers of this manufacturer revealed that imports as a percentage of the customer's total purchases of women's dresses decreased in 1978 compared to 1977 and decreased in the first eight months of 1979 compared to the same period of 1978.

Conclusion

After careful review, I determine that all workers of Liela Dress of Bridgeport, Bridgeport, Connecticut (TA-W-6081); Liela Dress of Derby, Incorporated, Derby, Connecticut (TA-W-6082); Liela Dress Company, Incorporated, Waterbury, Connecticut (TA-W-6083) are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of November 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-36925 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6028]

M & G Sportswear Co., Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on September 17, 1979 in response to a worker petition received on September 11, 1979 which was filed on behalf of workers and former workers producing boys' outerwear and girls' jackets at M & G Sportswear Company, Incorporated, Fall River, Massachusetts. The investigation revealed that M & G Sportswear produces primarily boys' outerwear and boys' suits. It is concluded that all of the requirements have been met.

The Department conducted a sample survey of customers of M & G Sportswear. The survey indicated that customers, accounting for a significant proportion of the subject firm's total sales, decreased purchases from the subject firm and increased purchases of imported boys' outerwear and boys' suits during the first nine months of 1979 compared with the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with boys' outerwear and boys' suits produced at M & G Sportswear Company, Incorporated, Fall River, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of M & G Sportswear Company, Incorporated, Fall River, Massachusetts who became totally or partially separated from employment on or after July 27, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of November 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-36926 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5771 and 5780]

Magnavox Consumer Electronics Co.; Negative Determination on Reconsideration

On November 9, 1979, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the Morristown and Johnson City, Tennessee, plants of the Magnavox Consumer Electronics Company. This determination was published in the Federal Register on November 16, 1979, (454 FR 66110).

The petitioning workers and former workers claim that foreign competition was the reason for the consolidation of the Morristown and Johnson City, Tennessee, plants into Magnavox's Greenville and Jefferson City, Tennessee, plants, respectively, and that the Morristown and Johnson City plants should be considered separately. The petitioners further claimed that (1) had the Department used a different measure, units instead of value, then the

sales criterion would have been met; (2) many of the parts (transistors, resistors, etc.) used in the production of printed circuit boards and other components of color TV's were imported; and (3) rubber molds were made at Morristown and sent overseas for tuner production.

On reconsideration, the Department found that it had considered both the Morristown and Johnson City plants separately in making its original determination, and the Department had used quantity data in determining worker group qualification under the sales criterion.

The Department has previously determined that component parts (transistors, resistors and the like) used in making color TV components are not like or directly competitive with the finished article. This position is supported by the courts in at least two decisions. Similarly, the Department sees no relevance for the certification of workers under the Act in the workers' claim that foreign competition of color TV's was the reason for the consolidation of the production facilities.

The Department found that the dominant cause for worker separations at both the Morristown and Johnson City plants was a domestic transfer of production. The Greenville plant never produced flybacks, yokes and tuners until about the third quarter of 1979 when production of these components was transferred from Morristown. Further, production of printed circuit boards at Greenville more than doubled in the third quarter of 1979 compared to the preceding quarters thus showing the transfer of this production from Morristown. The average production worker employment at Greenville increased considerably both in the third quarter of 1979 compared to the same quarter in 1978 and in the preceding quarter of 1979. Company officials stated that the production of wooden cabinets for TV consoles has been affected by consumer taste as consumers are opting more for portable TV's with plastic cabinets.

The Department found that the rubber mold production shipped overseas was used to produce tuners. These rubber molds were not tuners or parts of tuners but for jigs used in their production. Such shipments would provide no basis for certification under the Act. According to company officials, the closing of the two plants and the subsequent transfer of production to the other two Magnavox plants is part of an overall and ongoing effort to realign and improve their manufacturing facilities and operations. Company officials also claimed that the consolidation will reduce inter-plant transportation costs and improve production efficiencies vital to retaining a competitive position in the industry.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers at the Morristown and Johnson City, Tennessee, plants of the Magnavox Consumer Electronics Company.

Signed at Washington, D.C. this 23rd day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36927 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6085]

NL Industries, Inc., Industrial Chemicals Division, DeLore Plant; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 17, 1979 which was filed by the International Brotherhood of Painters and Allied Trades of the U.S. and Canada on behalf of workers and former workers producing berium sulfate at NL Industries, Incorporated, DeLore Plant, St. Louis, Missouri. The investigation revealed that the DeLore plant is a facility of the Industrial Chemicals Division and that the plant produces processed barite. In the following determinations, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of barite increased absolutely but decreased relative to domestic production in 1978 as compared to 1977. Imports of barite increased during the period January through June 1979 as compared to the same period in 1978. The petroleum and petroleum/natural gas exploration industries accounted for over 90% of the U.S. consumption of imported and domestically produced barite in 1978.

Results of a U.S. Department of Labor survey of customers of NL Industries' Industrial Chemicals Division indicated that none of the divisional customers who responded to the survey purchases imported barite during the two periods sureyed. The respondants, whose purchases of barite from the Division represented a significant portion of 1978 divisional sales, cited the high retail price and high transportation costs of imported barite as the reasons for relying on domestic sources of the processed mineral.

Conclusion

After careful review, I determine that all workers of the DeLore Plant, NL Industries, Incorporated, Industrial Chemicals Division, St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36928 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6339]

Phoenix Clothes; Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance: Correction

In FR Doc. 79-34919 appearing on page 65486 in the Federal Register of November 13, 1979, the following location in the Appendix under petitioner Phoenix Clothes, TA-W-6339 is corrected to read as follows: Quakertown, Pennsylvania.

Signed at Washington, D.C. this 19th day of November 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-36929 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5920]

Plymouth Rubber Co., Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on August 27, 1979 in response to a worker petition received on August 22, 1979 which was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America on behalf of workers and former workers producing rubber bands, rubber and vinyl soles, rubber and plastic tapes and vinyl furniture coverings at Plymouth Rubber Company, Incorporated, Canton, Massachusetts. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Plymouth Rubber Company produces a variety of products made from rubber or plastic or a combination of the two. Total company sales increased from 1977 to 1978 and from 1978 to 1979.

Sales and production of rubber bands, rubber and vinyl soles and rubber and plastic tapes increased from 1977 to 1978 and from 1978 to 1979. Sales of vinyl upholstery coverings accounted for an insignificant proportion of total sales during 1977 and 1978.

Conclusion

After careful review, I determine that all workers of Plymouth Rubber Company, Incorporated, Canton, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 36930 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6130]

Samco Sportswear, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on October 1, 1979 in response to a worker petition received on September 24, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing insulated underwear and ski wear at Samco Sportswear, Incorporated, St. Paul, Minnesota (TA-W-6130), and workers producing snowmobile, hunting and ski wear at Samco Sportswear of Crosby, Incorporated, Crosby, Minnesota (TA-W-6131).

A previous petition on behalf of workers at Samco Sportswear, Incorporated and Samco Manufacturing of Crosby, Incorporated was filed on May 10, 1979 (TA-W-5376-5377). That petition was withdrawn at the request of the petitioner.

In a letter dated October 22, 1979 the petitioner, Business Representative for the Amalgamated Clothing and Textile Workers Union, requested that the petition be modified to include only Samco Sportswear of Crosby, Incorporated, Crosby, Minnesota (TA-W-6131). Consequently, the investigation on behalf of workers and former workers at Samco Sportswear, Incorporated, St. Paul, Minnesota (TA-W-6130) has been terminated.

Signed at Washington, D.C. this 16th of November, 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-36931 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6073]

Swainsboro Print Works, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 20, 1979 in response to a worker petition received on September 13, 1979 which was filed by the Machine Printers and Engravers Association on behalf of workers and former workers printing textile cloth at Swainsboro Print Works, Incorporated, Swainsboro, Georgia. In the following determination without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ratio of U.S. imports of finished fabric to domestic production was 2.0 percent in 1978. U.S. imports decreased absolutely in the first six months of 1979 when compared with the same period in 1978.

A Department of Labor survey revealed that most customers of Swainsboro Print Works, Incorporated who decreased purchases of finished fabric did not increase purchases of imported finished fabric during the period under investigation and did not contract finishing operations to foreign firms.

Conclusion

After careful review, I determine that all workers of Swainsboro Print Works, Incorporated, Swainsboro, Georgia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-36932 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6175]

V-Line Clothes, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on October 10, 1979 in response to a worker petition received on October 3, 1979

which was filed on behalf of workers and former workers producing men's clothes at V-Line Clothes, Philadelphia, Pennsylvania. The investigation revealed that the company produces "big and tall" men's suits and sportcoats and that the company's correct name is V-Line, Incorporated. In the following determinations, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The men's suit and sport coat industry is typically seasonal. Production for the fall season normally begins in early spring. Production for the spring season normally begins in the fourth quarter of each year. The length of the spring season and subsequent start-up of fall production is influenced by the occurance of the Easter holiday each year. In most years there are seasonal layoffs and declines in sales in the spring and fall before fall and spring production begins.

Sales of "big and tall" men's suits and sportcoats at V-Line increased in the fiscal year ending June 30, 1979 compared to fiscal year 1978, and the first 9 months of 1979 compared to the same period of 1978. Any quarter to quarter declines were the result of normal seasonal fluctuations.

Conclusion

After careful review, I determine that all workers of V-Line, Incorporated, Philadelphia, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-36933 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6147]

Weyerhaeuser Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 2, 1979 in response to a worker petition received on September 27, 1979 which was filed by the International Woodworkers of America on behalf of workers and former workers producing cedar shakes for roofs at Weyerhaeuser Company, Raymond, Washington.

The petitioner requested withdrawal of the petition in a letter. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 16th day of November, 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-36934 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6116]

Youngstown Mine Corp.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 27, 1979, in response to a worker petition received on September 20, 1979, which was filed on behalf of workers and former workers mining metallurgical coal at Youngstown Mine Corporation, Dehue, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Petitioners allege that increased imports of steel have caused decreases in production and employment at Youngstown Mine Corporation, Dehue, West Virginia. The Youngstown Mine Corporation produces metallurgical coal; therefore, imported steel cannot be considered to be like or directly competitive with metallurgical coal.

Coke is metallurgical coal at a later stage of processing. Imports of coal and coke must be considered in determining import injury to workers mining metallurgical coal at Youngstown Mine Corporation, Dehue, West Virginia.

All coal mined at Youngstown Mine Corporation is shipped to coke oven plants owned by its parent company. The coke oven plants that receive coal from Youngstown had been operating at full capacity since January 1977. In June 1979, a portion of the coke ovens at one plant were idled for partial rebuilding. At the same plant, a blast furnace was also temporarily shutdown. With a blast furnace shutdown, less steel can be produced and, subsequently, less coke and coal are required.

The parent company of Youngstown Mine Corporation has made no committments to increase its purchases of imported coke.

Conclusion

After careful review, I determine that all workers of Youngstown Mine Corporation, Dehue, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-36935 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as

appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 21st day of November 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Allied Chemical Corp., Detroit Coke Plant, Semet-Solvay Division (USWA).	Detroit, Mich	11/12/79	10/29/79	TA-W-6,407	Metallurgical coke.
Ashley Fashion, Inc. (ILGWU)	New York, N.Y	11/8/79	11/5/79	TA-W-6,408	Ladies' coats.
Bernie Bee, Inc. (ILGWU)	New York, N.Y	11/12/79	11/5/79	TA-W-6,409	Ladies' dresses.
Bethlehem Steel Corp. (USWA)	Vernon, Calif	11/16/79	11/13/79	TA-W-6,410	Industrial fasteners, wire and reinforcing bars, wire rope, wire rods, alloy bars, structural shapes, and carbon steel bars.
Bomar Crystal Company (workers)	Middlesex, N.J	11/16/79	11/13/79	TA-W-6,411	Quartz crystals for use in CB radios and monitor scanners.
Brown Shoe Co. (United Food & Commercial Workers Union).	Brookfield, Mo	11/16/79	11/9/79	TA-W-6,412	Men's shoes.
Brown Shoe Co. (United Food & Commercial Workers Union).	Houston, Mo	11/16/79	11/13/79	TA-W-6,413	Ladies' shoes.
Irving Greenberg, Inc. (workers)	New York, N.Y	11/14/79	11/9/79	TA-W-6,414	Men's trousers.
K-D Manufacturing Company, Upland Industries Division (workers).	Upland, Pa	11/13/79	11/6/79	TA-W-6,415	Hex keys and screwdrivers.
Roseville Garment Company, Inc. (ILGWU)	East Newark, N.J	11/13/79	10/31/79	TA-W-6,416	Ladies' sportswear.
U.S. Steel Corp., Fairless Works (USWA)	Fairless Hills, Pa	10/22/79	10/18/79	TA-W-6,417	Carbon steel rods, wire and wire products, cold rolled sheets, bar size light shapes, and galvanized sheets.
Walworth Company, Greensburg Plant (USWA).	Greensburg, Pa	11/16/79	11/9/79	TA-W-6,418	Valves.
Wheeling Pittsburgh Steel Corp. (USWA)	Allenport, Pa	11/16/79	10/26/79	TA-W-6,419	Seamless steel tubing.
Witcher Creek Coal Company (UMWA)	Charleston, W. Va	11/12/79	11/6/79	TA-W-6,420	Utility compliance coal.

[FR Doc. 79-36906 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 21st day of November 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bleeker Street (workers)	New York, N.Y	11/14/79	10/22/79	TA-W-6,421	Misses and petite dresses and suits.
Kaiser Steel Corp. (sales office, fabricated products) (company).	El Monte, Calif	11/6/79	10/31/79	TA-W-6,422	Sales office.
Kaiser Steel Corp. (sales office, fabricated products) (company).	Oakland, Calif	11/6/79	10/31/79	TA-W-6,423	Sales office.
Kaiser Steel Corp. (sales office, fabricated products) (company).	Houston, Tex	11/6/79	10/31/79	TA-W-6,424	Sales office.
Kaiser Steel Corp. (sales office, manufactured products) (company).	Oakland, Calif	11/6/79	10/31/79	TA-W-6,425	Sales office.
Kaiser Steel Corp. (sales office, steel mill products) (company).	Los Angeles, Calif	11/6/79	10/31/79	TA-W-6,426	Sales office.
Kaiser Steel Corp. (sales office, steel mill products) (company).	Oakland, Calif	11/6/79	10/31/79	TA-W-6,427	Sales office.
Kaiser Steel Corp. (sales office, steel mill products) (company).	Houston, Tex	11/6/79	10/31/79	TA-W-6,428	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Phoenix, Ariz	11/6/79	10/31/79	TA-W-6,429	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Fresno, Calif	11/6/79	10/31/79	TA-W-6,430	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Sacramento, Calif	11/6/79	10/31/79	TA-W-6,431	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Oak Brook, Ill	11/6/79	10/31/79	TA-W-6,432	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Portland, Oreg	11/6/79	10/31/79	TA-W-6,433	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Sandy, Utah	11/6/79	10/31/79	TA-W-6,434	Sales office.
Kaiser Steel Corp. (sales representatives) (company).	Seattle, Wash	11/6/79	10/31/79	TA-W-6,435	Sales office.
Kaiser International Shipping Corp. (company).	Oakland, Calif	11/6/79	10/31/79	TA-W-6,436	Sales office.
Kaiser Steel Corp. (general offices) (company).	Oakland, Calif	11/6/79	10/31/79	TA-W-6,437	General offices.
Ford Motor Co., Metuchen Assembly plant (UAW).	Edison, N.J	11/14/79	11/9/79	TA-W-6,438	Pinto and Bobcat automobiles.

[FR Doc. 79-36909 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-28-M

MINIMUM WAGE STUDY COMMISSION

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission meeting:

Name: Minimum Wage Study Commission.
Date: December 11, 1979.
Time: 1 p.m.
Place: 1430 K St. NW, Suite 1102, Washington, DC.

Original notification of this meeting appeared in the Federal Register October 29, 1979.

Proposed Agenda

1. Pending Business.
2. Status of current projects.
3. New Business—Procedure for Final Report.

Next meeting of the Commission will be held Tuesday, January 8, 1980.

All communications regarding this Commission should be addressed to: Mr. Louis McConnell, Executive Director, 1430 K St. NW, Washington, DC 20005, (202) 376-2450.

Louis McConnell,

Executive Director.

[FR Doc. 79-36904 Filed 11-29-79; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Notice of Meeting

November 27, 1979.

Pursuant to sec. 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet on Thursday and Friday, December 13-14, 1979. The Committee will meet in Room B-100, Page Building Number 1, 2001 Wisconsin Avenue, NW., Washington, D.C. The sessions will convene at 9:00 a.m. on both days and will be open to the public. The Thursday session will adjourn at 5:00 p.m., and the session on Friday will adjourn at 3:00 p.m.

The Committee, consisting of 18 non-Federal members, appointed by the President from State and local government, industry, academia, and other appropriate areas, was established by Public Law 95-63, on July 5, 1977. Its duties are to: (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs of the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or the Congress.

The general agenda includes the following topics:

December 13, 1979

9:00-10:00—Plenary Session
Chairman's Comments
Meeting Plans
10:00-12:00—Panel Meetings
Ocean Dumping Panel
NOAA Organic Act Panel
Weather and Climate Panel
1:00-5:00—Ocean Dumping Panel (continued)

December 14, 1979

9:00-12:00—Decade of Ocean Resource Use and Management Panel
1:00-3:00—Plenary Session
Panel Reports
Other Business

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson in advance of the meeting. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussions. Written

statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Mr. John W. Connolly, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW. (Suite 438, Page Building #1), Washington, DC, 20235. The telephone number is (202) 653-7818.

Samuel H. Walinsky,

Executive Officer.

[FR Doc. 79-36850 Filed 11-29-79; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL SCIENCE FOUNDATION

Data Acquisition Activities Involving Educational Agencies and Institutions

Summary

The paperwork control requirements in Section 400 A of the General Education Provisions Act, added by Pub. L. 95-561, require public announcement of certain data requests that Federal agencies address to educational agencies and institutions.

The proposed data collection activity is: Description of a Proposed Collection of Information and Data Acquisition Activity:

a. Title of proposed activity: Science and Technology Parental Survey.
b. Agency/Office: National Science Foundation/Directorate for Science Education/Division of Science Education Development and Research.
c. Agency form number: NSF E-0005.
d. Legislative authority for this activity: Pursuant to the National Science Foundation Act of 1950, as amended.
e. Concise description of the proposed activity: The Social Science Education Consortium of Boulder, Colorado, with a grant from the National Science Foundation, is developing a set of learning materials focusing on public policy issues related to science and technology. Since these issues are of concern to large segments of the populations, the parents of selected high school students are being asked to submit input. The questionnaire will be distributed to the parents of 12 different classes, six classes in social science, and six classes in physical or biological science classes.
f. Voluntr y/obligatory nature of response: Voluntary.
g. Justification of how information collection will be used: The results of the survey will be used by the project staff to help select specific topics/issues on which the curriculum materials to be developed will focus.
h. Data Acquisition plan: 1. Method of collection—Distribution to high school students; 2. Time of collection—January 1980; 3. Frequence—One time.
i. Time table for dissemination of the collected data: No dissemination of the data.
j. Respondents: 1. Type—Parents of high school students; 2. Estimated number—360; 3. Estimated person hours per response—30 minutes.
k. Total estimated person hours to respondents: 180.
l. Estimated cost to the Federal agency to collect, process and analyze the data: $400.00.
m. A list of the specific data to be collected from each respondent (Scale of Importance—1 to 5):

Not important to study—1, Not too important to study—2, Undecided—3, Important to study—4, Very important to study—5.

Toxic chemical wastes ———
Defining legal death ———
DNA research ———
Weather modification ———
Oil shale mining ———
Microwave radiation ———
Dam safety ———
Inappropriate technology ———
Radioactive waste ———
Public immunization programs ———
Chemical food additives ———
Acid rain ———
Air pollution control ———
Product liability ———
Pesticide usage ———
National information system ———

n. Name and address of individual or office from which a copy of the data instrument may be obtained: Herman G. Fleming, Reference and Records Management Branch, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Dated: November 26, 1979.

Herman G. Fleming,

National Science Foundation Records and Reports Officer.

[FR Doc. 79-36801 Filed 11-29-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Metallurgy and Materials of the Advisory Committee for Materials Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Metallurgy and Materials of the Advisory Committee for Materials Research.
Date and time: December 18 and 19, 1979—9:00 a.m.-5:00 p.m. each day.
Place: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed both days, 9:00 a.m.-5:00 p.m.
Contact person: Dr. Lewis H. Nosanow, Acting Director, Division of Materials Research, Room 408, National Science Foundation, Washington, D.C., Telephone: (202) 632-7412.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Metallurgy.
Agenda: *Tuesday, December 18, 1979—9:00 a.m. to 5:00 p.m.—Closed.*
Review and comparison of declined proposals (and supporting documentation) with successful awards under the Metallurgy Program, including review of peer review materials and other privileged material.
Wednesday, December 19, 1979—9:00 to 5:00 p.m.—Closed.
9:00 a.m.—Further discussions of declined proposals and awards.
12:00 noon—Lunch.
1:00 p.m.—Preparation of report on Subcommittee findings and recommendations.
Reason for closing: The Subcommittee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

November 27, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 79-36839 Filed 11-29-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-35, issued to Boston Edison Company (the licensee), which revised the Technical Specifications for operation of the Pilgrim Nuclear Power Station Unit No. 1 (the facility) located near Plymouth, Massachusetts. The amendment is effective as of its date of issuance.

This amendment changes the Technical Specifications to relax pump operability requirments in systems where spare pumps are installed in excess of system requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 5.15(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 16, 1976, (2) Amendment No. 38 to License No. DPR-35, and (3) the Commission's Related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 12360. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23 day of November 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch #3, Division of Operating Reactors.

[FR Doc. 79-36830 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. PRM-51-5]

Commitment of Economic Resources Necessitated by Nuclear Waste Management Activities; Correction of a Published Petition for Rule Making

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction of a Published Petition for Rule Making.

SUMMARY: The Nuclear Regulatory Commission (NRC) is correcting a proposed amendment to Table S-3 which was published as a petition for rule making PRM-51-5 in the Federal Register on November 14, 1979 (44 FR 65598).

NOTE: That document inadvertently appeared in the Proposed Rules Section of the Federal Register. It should have appeared in the Notices Section.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

SUPPLEMENTARY INFORMATION: The States of New York, Ohio, and Wisconsin filed a motion before the Commission December 15, 1978, to amend 10 CFR 51.20(e), Table S-3 to account for the commitment of economic resources necessitated by nuclear waste management activities. The motion was accepted as a petition for rule making.

The NRC has received a letter from Attorney General Robert Abrams of the State of New York noting a typographical error in the proposed amendment to Table S-3. The error is in the cost figures for spent fuel containers. The figures presently in the proposed table are 0.8-1.05, but they should be changed to 0.7-1.05. Accordingly, the figures in the right-hand side of the attachment should read as follows:

	0.058-0.116
	0.35 -2.625
	0.525-1.75
	0.7 -1.05
	1.08 -5.25
	6.2 -27.5**
Total	8.913-38.291

Dated at Bethesda, Md., this 21st day of November 1979.

For the Nuclear Regulatory Commission.

John C. Carr,

Acting Director, Division of Rules and Records Office of Administration.

[FR Doc. 79-36828 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. DPR-6, issued to the Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Michigan. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to allow a change in the low reactor water level and low steam drum water levels setpoints.

In addition, the Commission's Safety Evaluation supporting the amendment also addresses the acceptability of the changes to the Technical Specifications and the acceptability of the modification made to the water level instruments to correct a deficiency which was reported in Licensee Event Report 79-22.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 23, 1979, and supplement thereto dated October 31, 1979, (2) Amendment No. 31 to License No. DPR-6, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 2nd day of November, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch #2, Division of Operating Reactors.

[FR Doc. 79-36831 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. NPF-5, issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Association of Georgia, and City of Dalton, Georgia, which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (the facility) located in Appling County, Georgia. The amendment is effective as of its date of issuance.

This amendment relates to inoperable suppression chamber to drywell vacuum breakers which are known to be closed and would permit (1) continued operation and startup with up to two

vacuum breakers inoperable and (2) continued operation with three inoperable vacuum breakers provided the remaining vacuum breakers are demonstrated operable at an increased frequency.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 27, 1979 as amended October 2, 1979, (2) Amendment No. 13 to License No. NPF-5, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Applying County Public Library, Parker Street, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23rd day of November 1979.

For the Nuclear Regulatory Commission.

Thomas A Ippolito,

Chief, Operating Reactors Branch #3, Division of Operating Reactors.

[FR Doc. 79-36832 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al.; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 55 to Facility Operating License No. DPR-49 issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, which revises the Technical Specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of the date of its issuance.

The amendment will: (1) Replace the requirement for repeated manual sampling and analysis for chlorine at the plant discharge with the requirement for continuous automatic recording/control equipment for dechlorination, (2) delete the requirement for taste for river water, (3) changes the sampling frequency for benthos from quarterly to semi-annually, and (4) make several administrative changes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for this action and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated March, 1973.

For further details with respect to this action, see (1) the application for amendment dated March 29, 1978 and supplement dated September 12, 1979, (2) application for amendment dated July 19, 1978, (3) Amendment No. 55 to License No. DPR-49, and (4) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, SE., Cedar Rapids, Iowa 52401. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 19th day of November 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief Operating Reactor Branch #3, Division of Operating Reactors.

[FR Doc. 79-36833 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320 (EPICOR-II)

Metropolitan Edison Co., et al, (Three Mile Island, Unit 2); Special Prehearing Conference on Petition to Intervene and Request for Hearing

November 15, 1979.

The Susquehanna Valley Alliance (SVA) filed a timely petition to intervene and request for a hearing on November 5, 1979. This petition was filed pursuant to the Commission's Memorandum and Order of October 16, 1979, and the Director's Order for Modification of License issued on October 18, 1979 (44 FR 61276-8, clarified at 62633).

The Licensees filed an answer on November 13, 1979, submitting that SVA had adequately set forth its interest in the petition and had identified aspects of the subject matter of the proceeding as to which intervention was sought. The Staff filed an answer on November 14, 1979, which asserted certain deficiencies in the petition regarding the pleading of interest, or how such interest would be affected by the results of this proceeding. However, the Staff concluded that these deficiencies could readily be cured, and that subject thereto and to the submission of a supplement, the petition should be granted.

SVA has alleged that it is a citizens' group "made up of residents of the Susquehanna River Valley, who use the river water for drinking, cooking bathing, recreation and other purposes and who are endangered by any releases of radioactivity through any pathway from Three Mile Island." It has been held that activities such as residing, working, playing and traveling within a reasonable distance of a nuclear facility may constitute a cognizable interest which could be affected by a proceeding.[1] It is necessary for an organization which asserts standing based on the interests of its members, to identify at least some specific members and their interests who have authorized the organization to

[1] Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

act on their behalf.[2] While SVA has adequately pleaded a basis for standing or interest, it will be required to file an amendment or supplement to its petition which satisfies the specificity requirements of 10 CFR 2.714(a) and (b).

Paragraph 3 of the SVA petition contains allegations regarding the assessment of worker exposures to the entire process of EPICOR–II,[3] problems related to solidification of spent resins, and Three Mile Island becoming a long-term waste storage site. Paragraph 4 alleges that the actions of the NRC and the damages resulting therefrom will significantly affect the quality of the human environment. These allegations challenge the sufficiency of the measures provided and the attendant impact on the environment, and cover the aspects of the proceeding on which intervention may appropriately be granted.

10 CFR 2.714(b) provides:

"Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.715a . . . the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party."

The Commission has directed the Licensees to begin promptly the operation of the process known as EPICOR–II, and to proceed expeditiously notwithstanding the filing of any requests for a hearing (Memorandum and Order entered October 16, 1979, pp. 14–16). This Licensing Board is also directed to bear in mind that the process of operating EPICOR–II may take as little as two months, and therefore any hearing shall be conducted as expeditiously as possible. Accordingly, we request all parties and counsel to exert their maximum efforts to expedite this proceeding. The petition to intervene and request for hearing filed by SVA is granted, subject to the prompt filing of a supplement to the petition setting forth contentions with reasonable specificity. The parties and counsel are encouraged to confer promptly and attempt to clarify contentions and issues, and to prepare for the early commencement of any necessary hearings.

Please take notice that a special prehearing conference will be held in accordance with the provisions of 10 CFR 2.751a. The conference will commence at 10:00 a.m., local time, on Thursday, December 6, 1979, and may extend to December 7, 1979. The conference will be held in Harrisburg, Pennsylvania, and the precise location will be announced in a later order. The purpose of the conference is to permit the identification of key issues in the proceeding, to consider the intervention petition as amended and supplemented, and to consider all contentions. An expedited schedule will be established for further actions in this proceeding, leading to the early commencement of any required evidentiary hearings. The Licensees, Staff and Intervention Petitioner are directed to attend and to participate. The public is invited to attend but there will be no opportunity for public participation during the first special prehearing conference. A subsequent session will be held at which public limited appearance statements may be made, and notice will be given as to the date and place for such limited appearances. Written limited appearance statements may be submitted to the Board at any time, and may be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Both oral and written statements will be made a part of the official record of this proceeding.

It is so ordered.

Dated at Bethesda, Md., this 15th day of November 1979.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman.

[FR Doc. 79-36834 Filed – -79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-367]

Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1); Opportunity for Hearing on Construction Permit Extension

The Nuclear Regulatory Commission (the Commission) has under consideration issuance of an amendment to Construction Permit No. CPPR–104 issued to Northern Indiana Public Service Company (the Permittee) for construction of the Bailly Generating Station, Nuclear 1 (the facility), a boiling water reactor to be located twelve miles northeast of Gary, Indiana.

The Permittee has requested, by an amended application for an amendment of the permit, that the latest date for completion of the construction of the facility be extended from September 1, 1979 to December 1, 1987.

Prior to the issuance of the amendment, the Commission must make the findings required by the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations, including 10 CFR 50.55(b) which requires a showing of good cause for extension of the completion date for a reasonable period of time.

The Permittee filed the application for extension of the completion date more than thirty (30) days prior to the date for expiration of the permit. Pursuant to the Administrative Procedure Act and 10 CFR 2.109 of the Commission's regulations, the construction permit will not be deemed to have expired until the application has been finally determined.

Pursuant to 10 CFR 50.91 of the Commission's regulations, the Commission has found that the amendment does not involve a significant hazards consideration. Pursuant to 10 CFR 2.105(a)(4) of the Commission's regulations, the Director of Nuclear Reactor Regulation has, in the exercise of his discretion, determined, in the circumstances obtaining here, that an opportunity for a public hearing should be afforded, particularly in light of recent expressions of citizen interest in this matter.

Accordingly, notice is hereby given that, by December 31, 1979, the Permittee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to whether, pursuant to 10 CFR 50.55(b), good cause has been shown for extension of the completion date for Construction Permit No. CPPR–104 for a reasonable period of time; *i.e*, with respect to whether, pursuant to 10 CFR 50.55(b), the causes put forward by the Permittee are among those which the Commission will recognize as bases for extending the completion date. Petitions for leave to intervene must be filed in accordance with the provisions of this Federal Register Notice and 10 CFR 2.714 of the Commission's regulations. A petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene with particular reference to the factors in paragraph (d) of 10 CFR 2.714. The petition should also

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[2] Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB–535, 9 NRC 377 (1979).

[3] "EPICOR–II" is a filtration and ion exchange decontamination system used to decontaminate intermediate-level radioactive waste water. The approximately 387,000 gallons of waste water stored in tanks in the auxiliary building at Three Mile Island Nuclear Station, Unit 2 (TMI–2), has a total radioactivity concentration less than 40 microcuries/milliliter, and is referred to as intermediate-level waste water.

identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Such petitions must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to William H. Eichhorn, Esq., 5243 Hohman Avenue, Hammond, Indiana 46368, the attorney for the Permittee.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

All petitions will be acted upon by the Commission, or licensing board designated by the Commission, or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the petitions.

In the event that a hearing is held and a person is permitted to intervene, that person becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, a party may present evidence and examine and cross-examine witnesses.

For further details with respect to this matter, see the application for amendment dated February 9, 1979, and amendment thereto dated August 31, 1979, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Westchester Township Public Library, 125 South Second Street, Chesterton, Indiana.

Dated at Bethesda, Md., this 26th day of November 1979.

For the Nuclear Regulatory Commission.

L. S. Rubenstein,

Acting Chief, Light Water Reactors Branch 4, Division of Project Management.

[FR Doc. 79-36826 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-514 and 50-515]

Portland General Electric Co., et al.; Availability of Draft Supplement to the Final Environmental Statement for Pebble Springs Nuclear Plant, Unit Nos. 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Final Environmental Statement (FES) has been issued by the Commission's Office of Nuclear Reactor Regulation related to the Pebble Springs Nuclear Plant, Unit Nos. 1 and 2, which is being proposed by the Portland General Electric Company, *et. al.* for construction in Gilliam County, Oregon. The Draft Supplement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and in the City Hall, Records Office, Arlington, Oregon 97812. This Draft Supplement to the FES presents a reevaluation of the alternative sites for constructing the Pebble Springs Plant. The Draft Statement is also being made available at the Oregon State Clearinghouse, Attn: Federal Aid Coordinator, Intergovernmental Relations Division, Executive Department, 240 Cottage St., S.E., Salem, Oregon 97310 and at the East Central Oregon Association of Counties, 920 S.W. Frazier St., Pendleton, Oregon 97801. Copies of the Commission's Draft Supplement to the FES may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Director, Division of Technical Information and Document Control.

Notice of availability of the NRC's Final Environmental Statement (NUREG 75/025) was published in the Federal Register on April 16, 1975 (40 FR 17065).

Interested persons may submit comments on the Draft Supplement to the FES for the Commission's consideration. Federal, State, and designated local agencies are being provided with copies of the Draft Supplement. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the City Hall Records Office, Arlington, Oregon. Upon consideration of comments submitted with respect to the Draft Supplement, the NRC will prepare a final supplement to the FES, the availability of which will be published in the Federal Register.

Comments on the Draft Supplement to the Final Environmental Statement from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Director, Division of Site Safety and Environmental Analysis. Comments are due by January 14, 1980.

Dated at Bethesda, Md., this 21st day of November 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-36827 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443 and 50-444]

Public Service Company of New Hampshire, et al., (Seabrook Station, Unit Nos. 1 and 2); Issuance of Director's Decision

By petition dated March 12, 1979, Robert A. Backus, on behalf of the Seacoast Anti-Pollution League (SAPL) requested that the Director, Office of Nuclear Reactor Regulation issue an order to show cause why Construction Permit Nos. CPPR-135 and CPPR-136 for the Seabrook Station, Unit Nos. 1 and 2, should not be suspended or revoked. SAPL based its request on (1) an alleged lack of financial qualifications of the lead applicant for the facility, Public Service Company of New Hampshire (PSNH); and (2) the assertion of a lack of financial qualifications review of other companies whose participation was being sought by PSNH. Notice of receipt of SAPL's petition was published in the Federal Register (44 FR 20827 (April 6, 1979)). On July 30, 1979, the New England Coalition on Nuclear Pollution (NECNP) filed a memorandum in support of SAPL's petition. SAPL's petition and NECNP's supporting memorandum have been considered under 10 CFR 2.206 of the Commission's regulations.

Upon review of the material submitted by SAPL and NECNP and upon consideration of other relevant information, I have determined not to issue an order to show cause. Accordingly, the requests of SAPL and NECNP are denied. A copy of the decision in this matter is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and in the local public document room for the Seabrook Station at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883. A copy of this decision will also be filed with the Secretary for the

Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations.

As provided in 10 CFR 2.206(c), this decision will constitute the final action of the Commission 20 days after the date of issuance of the decision, unless the Commission on its own motion institutes a review of this decision within that time.

Dated at Bethesda, Md., this 16th day of November 1979.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-35835 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

Recipt of Applications for Licenses and Applications for Amendments and Renewal of Licenses

AGENCY: U.S. Nuclear Regulatory Commission, Division of Fuel Cycle and Material Safety.

ACTION: Notice of receipt of applications for licenses and applications for amendments and renewal of licenses for nuclear fuel cycle operations, major research and development activities involving use of radioactive materials, and major radioactive material processors.

SUMMARY: In order to make the public more aware of the various proposed licensing actions that are submitted to the Division of Fuel Cycle and Material Safety, the Division has adopted the practice of placing a notice in the Federal Register upon receipt of an application for a license, major amendment or renewal of a license for nuclear fuel cycle operations or major processing and research development activities involving radioactive materials. In order to establish a baseline position, this Notice lists all of the actions of the types indicated above that are currently under consideration by the Division, that have not been previously noticed in the Federal Register. The applications are listed under the licensing branch in the Division that is responsible for the review.

A. Uranium Fuel Licensing Branch (Acting Chief, William T. Crow (301-427-4510))

1. Babcock and Wilcox Company, Lynchburg Research Center, Lynchburg, Virginia: Docket No. 70-824; License No. SNM-778.

Application for renewal of the license to develop, test, and examine nuclear reactor fuels and to develop overall fuel cycle processes.

2. Battelle Memorial Institute, Battelle Pacific Northwest Laboratories, Richland, Washington: Docket No. 70-984; License No. SNM-942.

Application for renewal of a special nuclear material license. The license covers a broad range of research and development operations using limited amounts of special nuclear material.

3. Combustion Engineering Company, Uranium Fuel Fabrication Plant, Hematite, Missouri: Docket No. 70-36; License No. SNM-33.

Application to amend the special nuclear material license to authorize the expansion of the existing uranium hexaflouride conversion plant to twice the current capacity.

4. Exxon Nuclear Company, Inc., Experimental Test Facility, Richland, Washington: Docket No. 70-2219.

Application for an special nuclear material license to authorize the construction and operation of a laboratory scale experimental test facility for the enrichment of uranium using laser beams.

The staff completed an enviromental impact appraisal of this proposed facility and issued a negative declaration in the Federal Register on October 4, 1976 (41 FR 43782).

5. Texas Instruments, Incorporated, Fuel Fabrication Facility, Attleboro, Massachusetts: Docket No. 70-33; License No. SNM-23.

Application for renewal of the special nuclear material license to fabricate plate type fuel elements for research reactors.

6. United Nuclear Corporation, Naval Products Division, Uncasville, Connecticut: Docket No. 70-371; License No. SNM-368.

Application for an amendment to provide additional flexibility for changes, using more generic criticality safety criteria, in the fabrication of enriched uranium fuel elements.

B. Advanced Fuel and Spent Fuel Licensing Branch (Chief, Leland C. Rouse (301-427-4205)

1. Battelle Memorial Institute, Battelle Columbus Laboratories, Columbus, Ohio: Docket No. 70-8; License No. SNM-7.

Application for renewal of the license that covers a broad range of research and development activities utilizing radioactive materials at the applicant's facilities in Columbus and West Jefferson, Ohio. The application for renewal also requests consolidation of activities authorized under Byproduct Material License No. 34-6854-05 into a single license (SNM-7).

2. Westinghouse Electric Corporation, Plutonium Fues Development Laboratory, Cheswick, Pennsylvania: Docket No. 70-1143; License No. SNM-1120.

Application for renewal of the special nuclear material license that covers pilot-plant scale fabrication and research and development activities on plutonium reactor fuels.

C. Material Licensing Branch (Chief, Vandy L. Miller (301-427-4002))

1. Mallinckrodt, Inc., St. Louis, Missouri: Docket No. 030-0001, License No. 24-02406-01.

Application for renewal of the license that authorizes possession and processing of byproduct material for distribution to authorized recipients. The products manufactured by Mallinckrodt are used primarily for medical research, diagnosis, and therapy.

2. Kawecki Berylco Industries, Inc., Boyertown, Pennsylvania: Docket No. 040-06940, License No. SMB-920.

Application for renewal of the source material license that authorizes processing of low concentration uranium and thorium ores, ore concentrates, slags, and residues for extraction of rare metals.

CONTACTS FOR FURTHER INFORMATION: Questions or comments concerning these proposed licensing actions should be directed to the Chief of the licensing branch responsible for the licensing review, as identified above, or to Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301-427-4485.

Dated at Silver Spring, Md., this 19th day of November 1979.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 79-36829 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312-SP]

Sacramento Municipal Utility District, (Rancho Seco Nuclear Generating Station); Reconstitution of Board

Michael L. Glaser, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Glaser is unable to continue his service on this Board.

Accordingly, Elizabeth S. Bowers, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of

this Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's rules of practice, as amended.

Dated at Bethesda, Md., this 20th day of November 1979.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-36836 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Nuclear Plant); Order Shifting Site of Pre-Hearing Conference

In order to accommodate the expected attendance at the special pre-hearing conference scheduled to begin at 9:30 a.m. on December 5, 1979, the site of the conference has been shifted to the Holiday Inn on U.S. Route 131 South, Petoskey, Michigan 49770.

By order of the Board.

Dated at Bethesda, Maryland this 28th day of November, 1979.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman.

[FR Doc. 79-37040 Filed 11-29-79; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Meeting

Pursuant to section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the President's Commission on White House Fellowships will be held on January 11, 1980, from 9:30 a.m. to 5:00 p.m., in the Office of Personnel Management Building, 1900 E Street NW., Room 5A06A, Washington, D.C.

This meeting is scheduled to give the Commissioners an opportunity to evaluate and review the Fellowship program. The items to be discussed will include the educational program, general program evaluation, inclusion of or exclusion of career categories, Fellowship application and selection processes, job performance by current Fellows, and other Commission matters.

The meeting will be open to the public. Questions about the agenda can be directed to (202) 653-6263.

W. Landis Jones,

Director.

[FR Doc. 79-36896 Filed 11-29-79; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

Mailer Visits

November 26, 1979.

Notice is hereby given that the Chairman of the Postal Rate Commission and members of the advisory staff will visit the offices of Consumer Marketing Services in Canton, MA on November 27, 1979 for the purpose of a general orientation on alternate delivery systems for books. A report of the visit will be on file in the Commission's Docket Room.

David F. Harris,

Secretary.

[FR Doc. 79-36884 Filed 11-29-79; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF STATE

[Public Notice 693]

Allocation of Aggregate Sugar Import Quota for 1980 in Conformity With the International Sugar Agreement, 1977

AGENCY: Department of State

ACTION: Allocation of Aggregate Sugar Import Quota.

SUMMARY: This notice contains the notification to the Commissioner of Customs of the allocation of the aggregate sugar import quota for calendar year 1980 among foreign countries. Pursuant to Proclamations 4610 (43 FR 56869) and 4663 (44 FR 30663) and Headnote 3 of Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, referred to as "TSUS"), this allocation is established by a designee of the Secretary of State after appropriate consultations with the Secretary of Agriculture and the Special Trade Representative, and is in conformity with the International Sugar Agreement, 1977, which the United States is applying provisonally

FOR FURTHER INFORMATION CONTACT: Marshall P. Adair, Deputy Chief, Tropical Products Division, Bureau of Economic and Business Affairs (202) 632-1490.

SUPPLEMENTARY INFORMATION: Headnote 3 of Subpart A, Part 10, Schedule 1 of the TSUS (referred to as "Headnote 3") establishes an annual aggregate import quota of 6,900,000 short tons, raw value of sugars, sirups, and molasses described in items 155.20 and 155.30 of the TSUS. It authorizes the Secretary of State or his designee to allocate this quota among supplying countries or areas to the extent necessary to conform with the provisions of the International Sugar Agreement, 1977.

Accordingly, pursuant to Headnote 3 and in conformity with the International Sugar Agreement of 1977, the aggregate sugar import quota for 1980 has been allocated as described below.

Dated: November 15, 1979.

Julius L. Katz,

Assistant Secretary for Economic and Business Affairs.

November 15, 1979.

Mr. Robert E. Chasen, *Commissioner of Customs, Washington, D.C. 20229.*

Dear Commissioner Chasen: Headnote 3 of Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 USC Section 1202, hereinafter referred to as "TSUS"), gives to the Secretary of State or his designee the authority to allocate the aggregate sugar import quota to the extent necessary to conform with provisions of the International Sugar Agreement. As the designee of the Secretary of State, I wrote to you on June 15, 1979, allocating the sugar import quota for the period beginning January 1, 1978 and extending through December 31, 1979. The purpose of this letter is to allocate the sugar import quota for 1980.

The appropriate consultations with the Secretary of Agriculture and the Special Trade Representative have taken place. Therefore, pursuant to the above-referenced Headnote 3 of the TSUS, and in conformity with the International Sugar Agreement of 1977, you are directed, effective the day following publication of this letter in the Federal Register, for the one-year period beginning on January 1, 1980 and extending through December 31, 1980, to implement the following quotas for the entry, or withdrawal from warehouse, for consumption in the United States of sugars, sirups and molasses described in TSUS items 155.20 and 155.30 and produced by foreign countries:

1. The total amount of sugars, sirups, and molasses described in TSUS items 155.20 and 155.30, the products of all foreign countries, entered, or withdrawn from warehouse, for consumption in any calendar year shall not exceed, in the aggregate, 6,900,000 short tons, raw value. For these purposes the term "raw value" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

(i) For articles described in item 155.20, by multiplying the number of pounds thereof by the greater of 0.93, or 1.07 less 0.0175 by each degree of polarization under 100 degrees (and fraction of a degree in proportion).

(ii) For articles described in item 155.30, by multiplying the number of pounds of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(iii) The Secretary of the Treasury shall establish methods for translating sugar into the terms of raw value for any

special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provisions.

2. Of the overall aggregate quota of 6,900,000 short tons raw value not more than 93,816 short tons raw value, the product of any country which is not a member of the International Sugar Agreement (ISA), may be entered, or withdrawn from warehouse for consumption in the period between January 1, 1980 and December 31, 1980, inclusive. The list of members and provisional members of the ISA to whom this quota does not apply is as follows:

Argentina, Australia, Austria, Bangladesh, Barbados, Belize, Bolivia, Brazil, Bulgaria, Canada, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, German Democratic Republic, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Jamaica, Japan, Kenya, Republic of Korea, Madagascar, Malawi, Mauritius, Mexico, Mozambique, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Singapore, South Africa, St. Christopher-Nevis-Anguilla, Swaziland, Sweden, Thailand, Trinidad and Tobago, Uganda, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

3. In addition to the allocation set forth in paragraph 2 above, of the overall aggregate quota of 6,900,000 short tons raw value not more than 105,522 short tons raw value, the product of Taiwan, may be entered, or withdrawn from warehouse for consumption in the period between January 1, 1980 and December 31, 1980, inclusive.

Sugars, sirups and molasses which have been released from the custody of the US Customs Service under the provisions of 19 USC Section 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The quotas set forth above are subject to adjustment in the future to remain in conformity with the International Sugar Agreement, 1977.

The actions taken with respect to the entry, or withdrawal from warehouse, for consumption in the United States of certain sugars, sirups and molasses produced by foreign countries has been determined to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 USC Section 553. This letter will be published in the Federal Register.

Sincerely,

Julius L. Katz

[FR Doc. 79-36885 Filed 11-29-79; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

General Counsel Order No. 1 (Revised); Organization and Functions of the Legal Division

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 1009 and 26 U.S.C. 7801, by Department Circulars 519 of June 30, 1934, and 595 of September 13, 1938, and by Treasury Department Order No. 190 (revised), I hereby define and prescribe the organization and functions of the Legal Division of the Treasury Department.

1. The Legal Division consists of a consolidated legal staff headed by the General Counsel, who is by statute the chief law officer of the Department of the Treasury, and is composed of all attorneys providing legal service in all offices and bureaus of the Treasury Department and all support personnel assigned to them. The legal staff provides legal advice to the Secretary of the Treasury and to the officers, offices and bureaus of the Department in accordance with the designations made by this Order. The General Counsel operates principally through a Deputy General Counsel, the Assistant General Counsels, the Chief Counsels, and the Legal Counsels listed herein, to whom delegations of specific authority are made by Legal Division Orders.

2. The General Counsel provides legal advice to the Secretary of the Treasury, the Deputy Secretary, the Under Secretaries, and the Assistant Secretaries on any legal matter which may arise within the Department. He supervises the Legal Division and establishes the policies, procedures, and standards governing its functioning.

3. The Deputy General Counsel is an Assistant General Counsel designated to serve as deputy and act as General Counsel in the absence of the General Counsel. The Deputy General Counsel reviews work prepared for the General Counsel and supervises the day-to-day operation of the Legal Division. He receives on behalf of the General Counsel reports from the Assistant General Counsels and Chief Counsels, excepting the Assistant General Counsel who is the Chief Counsel of the Internal Revenue Service and the Tax Legislative Counsel who report directly to the General Counsel.

4. The Assistant General Counsel—Chief Counsel, Internal Revenue Service, is the legal adviser to the Commissioner of the Internal Revenue Service and supervises and directs the legal staff advising the Internal Revenue Service. He reports directly to the General Counsel.

5. The Tax Legislative Counsel is the legal adviser to the Assistant Secretary (Tax Policy) and provides advice concerning tax legislation, tax policy, and tax treaties. He reports directly to the General Counsel.

6. The Assistant General Counsel (International Affairs) provides legal advice to the Under Secretary (Monetary Affairs), the Assistant Secretary (International Affairs), the Assistant Secretary (Economic Policy), the Commissioner of Customs (on tariff affairs), the Deputy Assistant Secretary (Tariff Affairs), the Assistant Secretary (Enforcement and Operations) with respect to foreign assets control and the Special Assistant to the Secretary (National Security). He supervises the Chief Counsel of the Office of Foreign Assets Control, the Senior Counsel (Developing Nations Finance) and the Senior Counsel (International Trade and Tariff Affairs). He reports to the General Counsel through the Deputy General Counsel.

7. The Assistant General Counsel (Administration, Legislation and Fiscal Operations) provides legal advice to the Assistant Secretary (Administration), the Fiscal Assistant Secretary, the Assistant Secretary (Legislative Affairs), and to the Office of the Secretary generally with respect to administrative procedure and Department administation. He also serves as legal adviser to the Treasurer of the United States, the Assistant Secretary (Public Affairs), and to the U.S. Savings Bonds Division. He is in charge of the nontax legislative activities of the Department. He supervises the Chief Counsel, Bureau of the Public Debt, and the legal functions of the Director, Office of the Director of Practice. He reports to the General Counsel through the Deputy General Counsel.

8. The Assistant General Counsel (Enforcement and Operations) provides legal advice to the Assistant Secretary (Enforcement and Operations). He acts for the General Counsel in the supervision of all nontax litigation matters and tax litigation matters which arise out of the activities of the Bureau of Alcohol, Tobacco and Firearms requiring General Counsel action. He supervises the Senior Counsel (Enforcement and Operations), the Chief Counsel, U.S. Customs Service, the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, the Legal Counsel, Bureau of the Mint, the Legal Counsel, U.S. Secret Service, the Legal Counsel, Federal Law Enforcement Training Center, and the Legal Counsel, Bureau of Engraving and Printing. He

reports to the General Counsel through the Deputy General Counsel.

9. The Assistant General Counsel (Domestic Finance) provides legal advice to the Assistant Secretary (Domestic Finance) and to the subordinates of that official. He supervises the Chief Counsel, Office of Revenue Sharing. He reports to the General Counsel through the Deputy General Counsel.

10. The Counselor to the General Counsel assists the General Counsel and the Deputy General Counsel by undertaking special assignments pertaining to any area of responsibility in the Office of the General Counsel. He reports to the General Counsel through the Deputy General Counsel.

11. The Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, is the chief law officer for that Bureau and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

12. The Chief Counsel, Office of the Comptroller of the Currency, is the chief law officer for that office and reports to the General Counsel through the Deputy General Counsel.

13. The Chief Counsel, United States Customs Service, is the chief law officer for that Service and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

14. The Chief Counsel, Foreign Assets Control, is the chief law officer for that office and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

15. The Chief Counsel, Bureau of the Public Debt, is the chief law officer for that Bureau, and reports to the General Counsel through the Assistant General Counsel (Administration, Legislation and Fiscal Operations) and the Deputy General Counsel.

16. The Chief Counsel, Office of Revenue Sharing, is the chief law officer for that Office, and reports to the General Counsel through the Assistant General Counsel (Domestic Finance) and the Deputy General Counsel.

17. The Legal Counsel, Bureau of the Mint, provides legal advice to that Bureau and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

18. The Legal Counsel, United States Secret Service, provides legal advice to that Service and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

19. The Legal Counsel, Federal Law Enforcement Training Center, provides legal advice to that Center and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

20. The Legal Counsel, Bureau of Engraving and Printing, provides legal advice to that Bureau and reports to the General Counsel through the Assistant General Counsel (Enforcement and Operations) and the Deputy General Counsel.

21. The Director of Practice (1) directs the legal functions performed in his office and reports with respect to those functions to the General Counsel through the Assistant General Counsel (Administration, Legislation and Fiscal Operations) and the Deputy General Counsel; (2) makes operating decisions in carrying out the responsibilities placed on him under 31 U.S.C. 1026 and by 31 CFR Part 10 under the administrative supervision of the General Counsel exercised by the General Counsel or the Deputy General Counsel; and (3) serves as Executive Director of the Joint Board of Actuaries pursuant to Part 901, Chapter VIII of Title 20, CFR.

A change in title of any official in the Office of the Secretary shall not affect the foregoing assignments unless the change includes a change of function. The General Counsel may, without formal Order, reassign on a temporary basis a function of an Assistant General Counsel or the Counselor.

Dated: November 27, 1979.

David R. Brennan,

Acting General Counsel.

[FR Doc. 79-36890 Filed 11-29-79; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 79-300]

Tariff Classification; Blue Jeans; Certain Cotton Denim Trousers Known as Blue Jeans Are Reclassified as Ornamented Wearing Apparel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Decision concerning an American manufacurer's petition.

SUMMARY: The Customs Service has reviewed a petition filed by an American manufacturer of wearing apparel requesting that certain cotton denim trousers known as blue jeans, currently classifiable as nonornamented wearing apparel under item 380.39, Tariff Schedules of the United States (TSUS), or under item 382.33, TSUS, be reclassified under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants. The petitioner claims that any of thirteen distinct features (enumerated below) appearing on blue jeans should result in classification of such blue jeans as ornamented wearing apparel. The Customs Service has reviewed the record and determined that three of the thirteen features claimed by the petitioner to be ornamental will result in the classification of blue jeans possessing any of these three features under the provisions for ornamented wearing apparel. The remaining ten features claimed to be ornamental will continue to be considered as nonornamental for tariff classification purposes.

DATES: This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this notice in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Philip Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229 (202-566-5865).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1978, a notice was published in the Federal Register (43 FR 34236) indicating that the Customs Service had received a petition from an American manufacturer of wearing apparel, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that certain cotton denim trousers known as blue jeans, currently classifiable as nonornamented wearing apparel under item 380.39, Tariff Schedules of the United States (TSUS), or under item 382.33, TSUS, be reclassified under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants. Comments concerning the petition were to have been received on or before September 5, 1978. However, notices extending the period of time for the submission of comments to November 3, 1978, were published in the Federal Register on September 6, 1978 (43 FR 39624), and on October 5, 1978 (43 FR 46108).

The petitioner contends that, pursuant to headnote 3, Schedule 3, TSUS, which purports to define the term, "ornamented," blue jeans possessing any of the following features should be

classified as ornamented for tariff purposes: (1) inserted leather yokes; (2) fabric used for pocket openings when pockets have been inserted into the leather portions of a garment; (3) double layered patch pockets formed by two pieces of irregularly shaped fabric which are stitched together, and then stitched to a third piece of fabric which acts as a backing; (4) a braided fabric strip stitched to the edge of a patch pocket opening; (5) stitching made necessary by precutting when the precutting has no apparent functional purpose except to make the stitching essential to completing the article; (6) separate belt loops sewn to form an "X"; (7) leather piping inserted along the edge of a pocket opening; (8) basket weave inserts made of leather strips inserted in patch pockets; (9) metal rivets; (10) stitching which holds together a patch pocket made from two pieces of fabric; (11) leather strips used to finish the opening of stand pockets; (12) patch pockets with openings which are formed from the material of the pocket itself, instead of by failing to stitch the top of the pocket to the body of the garment; and (13) leather piping inserted in the seams where two pieces of fabric are joined.

Headnote 3, Schedule 3, TSUS, reads as follows:

For the purposes of the tariff schedules—

(a) The term "ornamented," as used with reference to textile fabrics and other articles of textile materials, means fabrics and other articles of textile materials which are ornamented with—

(i) Fibers, filaments (including tinsel wire and lame), yarns, or cordage, any of the foregoing introduced as needlework or otherwise, including—

(A) Embroidery, and pile or tufting, whether wholly cut, partly cut, or not cut, and

(B) Other types of ornamentation, but not including functional stitching or one row of straight hemstitching adjoining a hem;

(ii) Burnt-out lace;

(iii) Lace, netting, braid, fringe, edging, tucking, or trimming, of textile fabric;

(iv) Applique and replique work, beads, bugles, spangles, bullions, or ornaments; or

(v) Any combination of the foregoing types or methods of ornamentation;

(b) Ornamentation of the types or methods covered hereby consists of ornamenting work done to a pre-existing textile fabric, whether the ornamentation was applied to such fabric—

(i) When it was in the piece,

(ii) After it has been made or cut to a size for particular furnishings, wearing apparel, or other article, or

(iii) After it had actually been incorporated into another article, and if such textile fabric remains visible, at least in significant part, after ornamentation: *Provided,* That lace, netting, braid, fringe, edging, tucking, trimming or ornament shall not be required to have had a separate existence from the fabric or other article on which it appears in order to constitute ornamentation for the purposes of this headnote; and

(c) Applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other article of textile materials shall be disregarded in determining the component material of chief value of such fabric or other article.

The American manufacturer's petition claims that each of the thirteen features enumerated above is primarily decorative rather than functional and ornaments the blue jeans upon which it appears. The petition also claims that the features in question are listed in headnote 3, Schedule 3, TSUS. Furthermore, the petition alleges that many of the features are necessitated by constructing the blue jeans from pieces of fabric in a manner different from the usual construction.

Discussion of Comments

The Customs Service has received sixty-two submissions concerning the instant American manufacturer's petition. Thirty-eight submissions supported the petition and twenty-four were opposed.

On the substantive issue of ornamentation, the submissions in opposition to the petition contend that the features in question are primarily functional and utilitarian, often forming integral parts of the blue jeans without which the blue jeans would be incomplete. Regarding the petitioner's claim that many of the subject features are necessitated by unusual construction, opponents of the petition argue that Customs should not classify wearing apparel based upon a mere opinion how a garment should be constructed. Where two different but integral pieces of fabric are joined together giving a decorative appearance, opponents of the petition contend that to hold such construction ornamental would be to hold ornamented all garments constructed from two different types of material. Finally, opponents of the petition argue that the subject features are not the kind of embellishments listed in headnote 3, Schedule 3, TSUS.

Determination

A feature, however ornamental, which constitutes a material and necessary portion of a garment, and without which the garment would be incomplete, does not constitute ornamentation. *Protest of B. Altman & Co.*, 34 Treas. Dec. 206, T.D. 37559 (1918); *United States* v. *Saks & Co.*, 13 Ct.Cust.Appls. 367, T.D. 41259 (1925); *Paramount Bead Corp.* v. *United States*, 19 C.C.P.A. 385, T.D. 45522 (1932). This principle was reaffirmed in *Blairmoor Knitwear Corp.* v. *United States*, 60 Cust. Ct. 388, C.D. 3396 (1968). In view of these decisions, it is our position that various features, including (1) the inserted leather yokes and (5) the stitching made necessary by precutting, do not constitute ornamentation for tariff purposes on the ground that they form integral parts of the blue jeans without which the blue jeans would be incomplete.

It is also well settled that a feature which is primarily functional and incidentally decorative in nature is nonornamental. Thus, a distinction must be drawn between that which finishes, joins, serves a utilitarian purpose, and only incidentally ornaments, and that which primarily adorns, embellishes, or ornaments. *Blairmoor, supra.* Based on this distinction, it is our position that certain features, including (2) the fabric used for pocket openings when pockets have been inserted into the leather portions of a garment, (3) double layered patch pockets, (9) metal rivets, (10) stitching which holds together a patch pocket made from two pieces of fabric, and (12) patch pockets with openings which are formed from the material of the pocket itself, are primarily functional and do not constitute ornamentation.

Furthermore, it is our decision that (7) leather piping inserted along the edge of a pocket opening, (11) leather strips used to finish the opening of stand pockets, and (13) leather piping inserted in the seams where two pieces of fabric are joined, are not ornamentation inasmuch as they do not constitute any of the types of ornamentation listed in headnote 3, Schedule 3, TSUS.

We conclude, however, that (4) the braided fabric strip stitched to the edge of a patch pocket opening constitutes ornamentation inasmuch as it is primarily decorative, only incidentally functional, and is described in headnote 3, Schedule 3, TSUS, as braid, edging, trimming, and textile fabric. Furthermore, (6) separate belt loops sewn to form an "X" constitute ornamentation inasmuch as they are primarily decorative rather than functional. Each of the belt loops

forming the "X" is strong enough to serve by itself.

Therefore, the additional loop is merely incidentally functional. Finally, it is clear that (8) the basket weave inserts made of leather strips and inserted into holes cut in patch pockets serve primarily for the visual effect they produce. The inserts, which are assembled from strips of leather into a fabric-like patch, are ornaments as listed in headnote 3, Schedule 3, TSUS. Therefore, the basket weave inserts constitute ornamentation for tariff purposes.

Blue jeans possessing any of the features enumerated in (4), (6), and (8) above are ornamented for tariff purposes and classifiable under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants.

This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this notice in the Customs Bulletin.

Dated: November 26, 1979.

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 79-36966 Filed 11-29-79; 8:45 am]

BILLING CODE 4810-22-M

VETERANS ADMINISTRATION

Medical Center; Land Acquisition and Construction of a Spinal Cord Injury Unit Memphis, Tenn.; Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement, Land Acquisition and Construction of a Spinal Cord Injury Unit, Veterans Administration Medical Center Memphis, Tennessee" dated November 1979, has been prepared as required by Section 102(2)(c) of the National Environmental Policy Act of 1969.

The project proposes purchase of eight parcels of land plus a reserved accessway totaling approximately 3.6 acres along the eastern and northern boundaries of the existing Veterans Administration property and construction of a spinal cord injury unit.

The parcels considered for purchase contain apartment buildings and residential buildings. The land will be used for patient recreation, the proposed spinal cord injury unit, parking and administrative reuse of existing buildings. The spinal cord injury unit will improve patient care and provide needed space in the existing hospital.

The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Office of Environmental Affairs (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202-389-2526). Single copies of the draft statement are available by request to the above office.

By direction of the Administrator.

Dated: November 9, 1979.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-36901 Filed 11-29-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 (Sub-Number 5)]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization. (Plans of Reorganization)

[Finance Docket No. 29171]

Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Co.—Submissions Under Section 6 of the Milwaukee Railroad Restructuring Act

November 20,1979.

Notice: This notice is to clarify the statement filing requirements in Finance Docket No. 28640 (Sub-No. 5) and Finance Docket No. 29171.

F.D. No. 28640 (Sub-No. 5). Previous notices in Finance Docket No. 28640 (Sub-No. 5) provided that any interested persons may participate in the proceeding by submitting a written statement indicating position (party in support or party in opposition) and including, if desired, a request for oral hearing. 44 FR 60898 (1979) (Trustee's plan), 44 FR 61724 (1979) (Association to Save Our Railroad Employment plan), and 44 FR 61724 (1979) (New Milwaukee Lines plan). Statements submitted with respect to the Trustee's plan were due on or before November 21, 1979. Statements submitted with respect to the Association to Save Our Railroad Employment plan and the New Milwaukee Lines plan were due no later than November 26, 1979.

Section 6 of the recently-enacted Milwaukee Railroad Restructuring Act, Public Law No. 96-101, provides that no later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of these) may submit to the Commission a single plan to convert all or a substantial part of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company into an employee or employee-shipper owned company. The plan must include a comprehensive evaluation of the Milwaukee's prospects for financial self-sustainability. The legislation further provides that within 30 days of submission of such plan the Commission must approve the proposal if it finds the plan feasible.

If a plan contemplated by Public Law No. 96-101 is submitted to the Commission no later than December 1, 1979; is found feasible by the Commission; is found fair and equitable to the Milwaukee estate by the bankruptcy court; and is implemented no later than April 1, 1980, proceedings on the reorganization plans filed in Finance Docket No. 28640 (Sub-No. 5) may be unnecessary. The Commission is, therefore, holding in abeyance any decision regarding proceedings in Finance Docket No. 28640 (Sub-No. 5). If the described events do not occur, the Commission must consider the reorganization plans and other pleadings filed in Finance Docket No. 28640 (Sub-No. 5). Persons who wish to participate in any proceedings which might occur in Finance Docket No. 28640 (Sub-No. 5) should submit a statement as provided in the prior notices. The statement need not detail the reasons for support or opposition, but only indicate the submitting person's intention to participate in any proceedings held in Finance Docket No. 28640 (Sub-No. 5).

F.D. No. 29171. On November 7, 1979, the Commission established a procedure in Finance Docket No. 29171 to govern plans submitted under Public Law No. 96-101, 44 FR 65233 (1979). The procedure provides that initial statements in support of or in opposition to submitted plans shall be filed no later than December 14, 1979. These statements should address in full detail all substantive and procedural matters raised by plans submitted pursuant to Public Law No. 96-101.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36857 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 148]

Assignment of Hearings

November 23, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 142431 (Sub-7F), Waymar Transport Corp, now assigned for hearing on December 4, 1979 (1 day) at Chicago, IL will be held in Room 1669, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 127840 (Sub-87F), Montgomery Tank Lines, Inc, now assigned for hearing on December 5, 1979 (1 day) at Chicago, IL will be held in Room 1669, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 143230 (Sub-2F), Luck Trucking, Inc, now assigned for hearing on December 6, 1979 (2 days) at Chicago, IL will be held in Room 1669, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 114273 (Sub-409F), CRST, Inc, now assigned for hearing on December 10, 1979 at Chicago, IL will be held in Room 1669, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 142416 (Sub-1F), M1F, Hamilton Transfer, Storage & Feeds Inc., now assigned for hearing on December 3, 1979 at Casper, WY will be held in Room No. 201, 2nd Floor Court Room, Federal Bldg. & Courthouse, 111 S. Wolcott, Casper, WY.

MC 139482 (Sub-69F), New Ulm Freight Lines, Inc., now assigned for hearing on November 14, 1979 at Washington, DC is canceled and Application Dismissed.

MC 146172F, Universal Coaches, Inc., transferred to Modified Procedure.

MC 31389 (Sub-273F), McLean Trucking Company, A Corp., now being assigned for hearing on January 28, 1980 (2 Days), at St. Louis, MO in a hearing room to be designated later.

MC 135874 (Sub-145F), LTL Perishables, Inc., now being assigned for hearing on January 17, 1980 (2 Days), at St. Paul, MN in a hearing room to be designated later.

MC 76993 (Sub-28F), Express Freight Lines, Inc., now assigned for hearing on January 15, 1980 at Milwaukee, WI will be held at the Federal Bldg. & Courthouse, Court Room 254, 517 East Wisconsin Avenue, Milwaukee, WI.

MC 97457 (Sub-8F), Warner & Sons Trucking Company, A Corporation, now assigned for hearing on December 10, 1979 at Lansing, MI will be held at the Michigan Public Service Commission, Hearing Room B, 6545 Mercantile Way, Lansing, MI.

MC 730 (Sub-428F), Pacific Intermountain Express, Co., A Nevada Corporation, now assigned for continued hearing on January 22, 1980 (14 Days), at Dallas, TX will be held at the Sheraton-Dallas Southland Center, 2117 Live Oak Street, Dallas, TX.

MC 144398 (Sub-2F), Wayne Transport, Inc., now assigned for hearing on January 17, 1980 at St. Paul, MN is canceled and transferred to Modified Procedure.

MC 139571 (Sub-1F), A. S. Mason, Inc., now assigned for hearing on December 5, 1979 will be held in room 224, Federal Building, 800 Truxtun Ave., Bakersfield, CA and continued to December 6 and 7, 1979 in room 204, Federal Building, 800 Truxtun Ave., Bakersfield, CA.

MC 98689 (Sub-2F), D. A. Brown Trucking Company, now assigned for hearing on December 10 and 14, 1979 will be held in room 224, Federal Building, 800 Truxtun Ave., Bakersfield, CA and continued to December 11, 12 and 13, 1979 in room 204, Federal Building, 800 Truxtun Ave., Bakersfield, CA.

MC 138469 (Sub-96F), Donco Carriers, Inc., now assigned for hearing on December 5, 1979 at Kansas City, MO will be held at the I.C.C. Hearing Room, 600 Federal Building, 911 Walnut Street, Kansas City, MO.

MC 44735 (Sub-36F), Kissick Truck Lines, Inc., A Kansas Coroporation, now assigned for hearing on December 7, 1979 at Kansas City, MO will be held at the I.C.C. Hearing Room, 600 Federal Building, 911 Walnut Street, Kansas City, MO.

MC 135895 (Sub-26F), B & R Drayage, Inc., now assigned for hearing on December 3, 1979 at New Orleans, LA will be held in Room T-9028, U.S. Postal Service, Federal Building and U.S. Post Office, 701 Loyola Avenue, New Orleans, LA.

MC 111310 (Sub-37F), Beer Transit, Inc., now assigned for hearing on Novmeber 26, 1979 at Milwaukee, WI is canceled and transferred to Modified Procedure.

MC 14286 (Sub-3F), MCO Transport, Inc., now assigned for hearing on December 12, 1979 at Charlotte, NC will be held in Room CC-516, Mart Office Bldg., 800 Briar Creek Road, Charlotte, NC.

MC 6774 (Sub-4F), Smith Dray Line & Storage Co., Inc., now assigned for hearing on December 17, 1979 at Charlotte, NC will be held in Room CC-516, Mart Office Bldg., 800 Briar Creek Road, Charlotte, NC.

MC 120761 (Sub-47F), Newman Bros. Trucking Company, now assigned for hearing on November 28, 1979 at Dallas, TX will be held in Room No. 5A15-17, Federal Building, 1100 Commerce Street, Dallas, TX.

MC 73165 (Sub-466F), Eagle Motor Lines, Inc., now assigned for hearing on December 6, 1979 at Kansas City, KS is canceled and transferred to Modified Procedure.

MC 145982 F, Motor Transportation Company, Inc., now assigned for hearing on December 5, 1979 at Hazelton, PA is postponed to February 6, 1980 (3 Days), at Hazelton, PA in a hearing room to be designated later.

MC 140818 (Sub-1F), The Gray Line of Seattle, Inc., now assigned for hearing on November 26, 1979 (4 days) at Seattle, WA is postponed to February 27, 1980 at Seattle, WA, location of hearing room will be designated later.

MC 138237 (Sub-9F), Metro Hauling, Inc., now being assigned for hearing on March 3, 1980 (1 week) at Seattle, WA, location of hearing room will be designated later.

MC 145939 (Sub-1F), Atlantic Carriers, Inc., now assigned for hearing on December 4, 1979 (1 day) at Omaha, NE will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 138627 (Sub-49F), Sithway Motor Xpress, Inc., now assigned for hearing on December 5, 1979 (1 day) at Omaha, NE will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 90870 (Sub-19F), Riechmann Enterprises, Inc., now assigned for hearing on December 6, 1979 (2 days) at Omaha, NE will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 124211 (Sub-356F), Hilt Truck Line, Inc., now assigned for hearing on December 10, 1979 (2 days) at Omaha, NE will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 127042 (Sub-232F), Hagen, Inc., now assigned for hearing on December 12, 1979 (1 week) at Omaha, NE will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 2860 (Sub-175F), National Freight, Inc., MC 61592 (Sub-431F), Jenkins Truck Line, Inc., MC 100449 (Sub-99F), Mallinger Truck Line, Inc., MC 109633 (Sub-41F), Arbet Truck Lines, Inc., MC 111812 (Sub-611F), Midwest Coast Transport, Inc., MC 114457 (Sub-473F), Dart Transit Company, MC 116544 (Sub-167F), Artruk Freight Systems, Inc., MC 117730 (Sub-40F), Koubenec Motor Service, Inc., MC 117940 (Sub-308F), Nationwide Carriers, Inc., MC 135410 (Sub-39F), Courtney J. Munson, DBA Munson Trucking, MC 135874 (Sub-138F), LTL Perishables, Inc., MC 138420 (Sub-29F), Chizek Elevator & Transport, Inc. MC 142310 (Sub-9F), H. O. Wolding, Inc., MC 142941 (Sub-27F), Scarborough Truck Lines, Inc. and MC 142715, (Sub-23F), Lenertz, Inc. now assigned for hearing on November 28, 1979 at Milwaukee, WI will be held in room 254, Federal Building & Courthouse, 517 East Wisconsin Avenue.

MC 123272 (Sub-24F), Fast Freight, Inc., now assigned for hearing on December 5, 1979 at Milwaukee, WI will be held in room 398, Federal Building, 517 East Wisconsin Avenue.

MC 128279 (Sub-35F), Arrow Freightways, Inc., now assigned for hearing on November 28, 1979 at Alburquerque, NW will be held in Real Grand Hotel, 1015 Rio Grand Boulevard, N.W.

MC 123681 (Sub-36F), Widing Transporation, Inc., now assigned for hearing on December 3, 1979 at Portland, OR will be held in Magistrates Court Room, 5th Floor, U.S. Court House, 620 S.W. Main and on December 4, 1979 at Portland, OR will be held in room No. 717 (District Court Room), U.S. Court House, 620 S.W. Main.

MC 128279 (Sub-35F) Arrow Frieghtways, Inc., now assigned for hearing on November 28, 1979 at Albuquerque, NM

will be held in the Real Grand Hotel, 1015 Rio Grand Boulevard, N.W.

MC 123681 (Sub-36F), Widing Transportation, Inc., now assigned for hearing on December 3, 1979 at Portland, OR will be held in Magistrates Court Room—5th Floor, U.S. Court House, 620 Main S.W.

MC 38170 (Sub-30F), White Star Trucking, Inc., now assigned on December 12, 1979 (3 days) at Chicago, IL will be held in Room 1669, Everett McKinley Dirksen Building, 219 South Dearborn Street.

Agatha L. Mergenovich,

Secretary,

[FR Doc. 79-36853 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 149]

Assignment of Hearings

November 26, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 21060 (Sub-18F), Iowa Parcel Service, Inc., now assigned for hearing on November 26, 1979 (2 weeks) at Des Moines, IA is canceled and transferred to Modified Procedure.

MC 143812 (Sub-3F), Martin E. Van Diest, DBA M. Van Diest Co., transferred to modified procedure.

MC 103926 (Sub-72F), W. T. Mayfield Sons Trucking Co., now being assigned for hearing on February 5, 1980 at Birmingham, AL (2 Days), location of hearing room will be by subsequent notice.

MC 121060 (Sub-29F), Arrow Truck Lines, Inc., now being assigned for hearing on February 7, 1980 at Birmingham, AL (2 Days), location of hearing room will be by subsequent notice.

MC 136828 (Sub-29F), Cook Transports, Inc., now being assigned for hearing on February 11, 1980 (2 Days) at Birmingham, AL location of hearing room will be by subsequent notice.

MC 143702 (Sub-5F), All Freight Systems, Inc., now assigned for hearing on December 10, 1979 and continued to December 11, 1979 at Kansas City, MO, will be held in the I.C.C. Hearing Room, 600 Federal Building, 911 Walnut Street, Kansas City, MO.

MC 33641 (Sub-140F), IML Freight, Inc., now assigned for hearing on November 26, 1979 at Salt Lake City, UT., and continued to December 3, 1979 at Dallas, TX, is canceled and transferred to Modified Procedure.

MC 95540 (Sub-1079F), Watkins Motor Lines, Inc., now assigned for hearing on December 11, 1979 at Washington, DC, is canceled and Application Dismissed.

MC 145686, Cook Motor Lines, Inc., transferred to Modified Procedure.

MC 142130 (Sub-5F), Crescent Industries, Inc., transferred to Modified Procedure.

MC 113459 (Sub-131F), H. J. Jeffries Truck Line, Inc,. transferred to Modified Procedure.

MC 14252 (Sub-46F), Commercial Lovelace Motor Freight, Inc., now assigned for hearing on November 26, 1979 at Parkersburg, WV, is canceled and transferred to Modified Procedure.

MC 143059 (Sub-57F), Mercer Transporation Company, now assigned for hearing on December 5, 1979 at Washington, DC, is canceled and transferred to Modified Procedure.

MC 41406 (Sub-97F), Artim Transportation System, Inc., now being assigned for hearing on February 13, 1980 (3 days) at Birmingham, AL, location of hearing room will be by subsequent notice.

Agatha L. Mergenovich,

Secretary,

[FR Doc. 79-36854 Filed 11-29-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 150]

Assignment of Hearings

November 26, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 1515 (Sub-258F), Greyhound Lines, Inc, now assigned for hearing on October 31, 1979 (3 days), at Tallahassee, FL, will be held in Room No. 122, Fletcher Building, 101 East Gaines Street.

MC 1515 (Sub-258F), Greyhound Lines, Inc, now assigned for hearing on November 5, 1979 (2 days) at Albany, GA will be held in Room No. 212, Courthouse Building, 225 Pine Street.

MC 1515 (Sub-258F), Greyhound Lines, Inc, now assigned for hearing on November 8, 1979 (2 days) at Columbus, GA will be held at the Probate Court—6th Floor, Government Center.

MC-C-10314, Frank M. Herbert, Inc., Edgemere Terminals, Inc., Pioneer Transport, Inc., and L.G. Truck Leasing, Inc.—Investigation And Revocation Of Certificate, now assigned for hearing on October 30, 1979 (2 days) at Boston, MA will be held at the Judiciary Committee, Hearing Room 136, State House Annex.

MC 120364 (Sub-19F), A & B Freight Lines, Inc., now being assigned for hearing on January 23, 1980 (3 days), at Chicago, IL in a hearing room to be designated later.

MC 85934 (Sub-97F), Michigan Transportation Company, now begin assigned for hearing on January 28, 1980 (1 day), at Chicago, IL in a hearing room to be designated later.

MC 128030 (Sub-121F), The Stout Trucking Co., Inc., now being assigned for hearing on January 29, 1980 (1 day), at Chicago, IL in a hearing room to be designated later.

MC 145601 (Sub-1F), Morgan County Trucking, Inc., now being assigned for hearing on January 30, 1980 (3 days), at Chicago, IL in a hearing room to be designated later.

MC 107403 (Sub-1152F), Matlack, Inc., now being assigned for hearing on January 9, 1980 (3 days), at Houston, TX in a hearing room to be designated later.

MC 124692 (Sub-257F), Sammons Trucking, a Corporation, now being assigned for hearing on January 14, 1980 (2 days), at Houston, TX in a hearing room to be designated later.

MC 145154 (Sub-2F), Young's Transportation Company, now being assigned for hearing on January 16, 1980 (3 days), at Houston, TX in a hearing room to be designated later.

MC C 10341, Catawese Coach Lines, Inc. -v- B.K.W. Coach Lines, Inc., now being assigned for hearing on January 7, 1980 (2 days), at Philadelphia, PA in a hearing room to be designated later.

MC 144398 (Sub-2F), Wayne Transport, Inc., now being assigned for hearing on January 17, 1980 (2 days) at St. Paul, MN in a hearing room to be designated later.

MC 146314 (Sub-1F), G & T Trucking Company, now being assigned for hearing on January 21, 1980 (1 week) at St. Paul, MN in a hearing room to be designated later.

MC 52460 (Sub-232F), Ellex Transportation, Inc., now being assigned for hearing on January 8, 1980 (1 day), at Dallas, Texas, in a hearing room to be designated later.

MC 107064 (Sub-131F), Steele Tank Lines, Inc., now being assigned for hearing on January 16, 1980 (3 days), at Dallas, Texas, in a hearing room to be later designated.

MC 118130 (Sub-96F), South Eastern Xpress, Inc., now being assigned for hearing on January 9, 1980 (1 day), at Dallas, Texas, in a hearing room to be later designated.

MC 133095 (Sub-202F), Texas Continental Express, Inc., now being assigned for hearing on January 10, 1980 (2 days), at Dallas, Texas, in a hearing room to be later designated.

MC 142130 (Sub-4F), Cresent Industries, Inc., now being assigned for hearing on January 14, 1980 (2 days), at Dallas, Texas, in a hearing room to be later designated.

MC 124070 (Sub-34F), Chemical Haulers, Inc., now being assigned for hearing on January 22, 1980 (1 day), at Chicago, IL in a hearing room to be later designated.

MC 145939 (Sub-1F), Atlantic Carriers, Inc., now being assigned for hearing on December 4, 1979 (1 Day), at Omaha, NE. in a hearing room to be designated later.

MC 138627 (Sub-49F), Smithway Motor Xpress, Inc., now being assigned for

hearing on December 5, 1979 (1 Day), at Omaha, NE. in a hearing room to be designated later.
MC 90870 (Sub-19F), Riechmann Enterprises, Inc., now being assigned for hearing on December 6, 1979 (2 Days), at Omaha, NE. in a hearing room to be designated later.
MC 124211 (Sub-356F), Hilt Truck Line, Inc., now being assigned for hearing on December 10, 1979 (2 Days), at Omaha, NE. in a hearing room to be designated later.
MC 127042 (Sub-232F), Hagen, Inc., now assigned for continued hearing on December 12, 1979 (3 Days), at Omaha, NE. in a hearing room to be designated later.
FD 29099, Petition of City of St. Louis, MO. for Order Requiring Grant of Trackage Rights and Authorizing Related Changes in Terminal Operations, now being assigned for hearing on November 27, 1979 (4 Days), at St. Louis, MO. in a hearing room to be designated later.
MC 135874 (Sub-144F), LTL Perishables, Inc., now being assigned for hearing on January 15, 1980 (2 Days), at St. Paul, MN. in a hearing room to be designated later.
MC 108119 (Sub-124F), E. L. Murphy Trucking Company, now assigned for hearing on October 30, 1979 (1 day) at Chicago, IL, will be held at the De Paul College, The Lewis Center, 25 East Jackson Street.
MC F 13826F, H & W Motor Express Company Purchase (Portion)—The Rock Island Motor Transit Co., now assigned for hearing on October 31, 1979 (3 days) at Chicago, IL, will be held at the De Paul College, The Lewis Center, 25 East Jackson Street.
MC 112893 (Sub-55F), Bulk transport Company, now assigned for hearing on November 5, 1979 (1 day) at Chicago, IL, will be held at the De Paul College, The Lewis Center, 25 East Jackson Street.
MC 119741 (Sub-143F), Green Field Transport Company, Inc., now assigned for hearing on November 6, 1979 (2 days), at Chicago, IL, will be held at the De Paul College, The Lewis Center, 25 East Jackson Street.
MC 146110F, Small Shipment Express of Illinois, Inc., now assigned for hearing on November 8, 1979 (2 days) at Chicago, IL, will be held at the De Paul College, The Lewis Center, 25 East Jackson Street.
MC 129537 (Sub-24F), Reeves Transportation Co., now asigned for hearing on October 15, 1979 (5 days) at Montgomery, AL, is canceled.
MC 145297F, Vern Breazeale Freight Service, DBA Denver-Lander-Riverton Freight Service, now assigned for hearing on October 29, 1979 at Lander, WY, is canceled.
MC 4405 (Sub-590F), Dealers Transit, Inc., transfered to Modified Procedure.
MC 145838 (Sub-1F), Ohio Container Service, Inc., transfered to Modified Procedure.
MC 113158 (Sub-33F), Todd Transport Company, Inc., transfered to Modified Procedure.
MC 11603 (Sub-8F), Basse Truck Line, Inc., now assigned for continued Prehearing Conference on October 9, 1979 at Washington, DC, is canceled and application dismissed.
MC 124211 (Sub-262MIF), Hilt Truck Line, Inc., now assigned for hearing on January 14, 1979 (1 week) at New York, NY in a hearing room to be later designated.
MC 172 (Sub-9F), Robert E. Wade, transfered to Modified Procedure.
MC 145864F, Paragon Transportation Co., Inc., now assigned for hearing on November 1, 1979 (2 days) at Boston, MA will be held at the Judiciary Committee, Hearing Room 136, State House Annex.
MC 97457 (Sub-8F), Warner & Sons Trucking Company, now being assigned for hearing on December 10, 1979 (2 days), at Lansing, MI, location of hearing room to be later designated.
MC 135082 (Sub-76F), Roadrunner Trucking, Inc., now being assigned for hearing on January 15, 1979 (9 days) at Albuquerque, New Mexico, location of hearing room to be later designated.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36855 filed 11-29-79; 8:45 am]
BILLING CODE 7035-01-M

Fourth Section Application for Relief

November 23, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before December 17, 1979.

FSA No. 43771, South African Marine Corporation (No. 3), intermodal rates on general commodities in containers from rail terminals on the United States Pacific Coast to ports in Africa, via interchange points on the United States Atlantic Coast, in its Tariff ICC SAMU 300, FMC No. 6, effective December 20, 1979. Grounds for relief—water competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-36852 Filed 11-29-79; 8:45 am]
BILLING CODE 7035-01-M

[Directed Service Order No. 1398; Authorization Order No. 15]

Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

Decided: November 16, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979), 44 FR 56343 (October 1, 1979).

This Authorization Order is being issued to grant approval to:

A. A memorandum of understanding between the Federal Railroad Administration (FRA), William M. Gibbons, Trustee of the properties of Chicago, Rock Island and Pacific Railroad Company (Trustee), and KCT-DRC, and

B. An agreement between the Trustee and KCT-DRC, both related to continuance of the RI/FRA 4-R Act Car and Locomotive Repair Project (the "Project").

Under the section of DSO No. 1398 entitled "Approval for Actions," the DRC was required to seek Commission approval in a number of areas including "agreements between the DRC and RI trustee." *See DSO No. 1398, 360 I.C.C. at 309 [44 FR 56349, 3rd column].*

The RI Trustee has been rebuilding freight cars and locomotives pursuant to a Financing Agreement dated September 21, 1978, between United States and Trustee under RI/FRA 4-R Act Car and locomotive project. The FRA has authorized the continuing of the project by DRC.

The FRA, KCT-DRC and the Trustee have agreed to a production schedule for continuance of the project until the expiration of the initial period of directed service and have entered into the memorandum of Understanding outlining the terms and conditions under which the project will be continued. KCT-DRC and the Trustee have also entered into an agreement contemplated by the Memorandum of Understanding which sets forth the scope of authority, responsibility and liability to be assumed by KCT-DRC in continuing the project.

All costs incurred by the DRC associated with the continuance of the project, which are not reimbursed by the Trustee in accordance with the Memorandum of Understanding and the Agreement, shall be treated as compensable costs of directed service up to a maximum of $150,000. Accordingly, the DRC is authorized to expend a maximum of $150,000 in connection with this project. *See* DSO No. 1398, 360 I.C.C. at 310 [44 FR 56350 1st column]. However, we shall require the DRC to obtain Commission approval prior to making any project-related expenditures after the expenditure of $150,000.

Accordingly, the DRC submitted DRC Report No. 14, dated November 9, 1979, which requests that the Commission approve the Memorandum of Understanding and the Agreement so that this important project can be continued.

We find:

1. This action will not significantly affect either the quality of the human

environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered:

1. The Commission approves the Memorandum of Understanding between the Federal Railroad Administration, William M. Gibbons, Trustee of the properties of the Chicago, Rock Island and Pacific Railroad Company (Trustee), and KCT–DRC and an Agreement between the Trustee and KCT–DRC, both related to the continuance of the RI/FRA 4–R Act Car and Locomotive Repair Project as requested in DRC Report No. 14.

2. The total amount which the DRC is authorized to spend in connection with this project is $150,000, as discussed above.

3. This decision shall be effective on November 16, 1979.

By the Commission, Railroad Service Board, Members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–36858 Filed 11–29–79; 8:45 am]

BILLING CODE 7035–01–M

Transportation of Used Household Goods in Connection With a Pack-and-Crate Operation on Behalf of the Department of Defense; Special Certificate Letter Notice(s)

The following letter notices request participaton in a Special Certificate of Public Convenience and Necessity for the transportation of used household goods, for the account of the United States Government, incident to the performance of a pack-and-crate service on behalf of the Department of Defense under the Direct Procurement Method or the Through Government Bill of Lading Method under the Commission's regulations (49 CFR 1056.40) promulgated in "Pack-and-Crate" operations in Ex Parte No. MC–115, 131 M.C.C. 20 (1978).

An original and one copy of verified statement in opposition (limited to argument and evidence concerining applicant's fitness) may be filed with the Interstate Commerce Commission on or before December 20, 1979. A copy must also be served upon applicant or its representative. Opposition to the applicant's participation will not operate to stay commencement of the proposed operation.

If applicant is not otherwise informed by the Commission, operations may commence *within 30 days* of the date of its notice in the Federal Register, subject to its tariff publication effective date.

HG–36–79 (special certificate—used household goods), filed November 15, 1979. Applicant: HORNE STORAGE COMPANY, INC., 114 W. Sherman St., Goldsboro, NC 27530. Representative: C. Darrell Horne (address same as applicant). Authority sought: Between points in Chatham, Alamance, Caswell, Graham, Macon, Transylvania, Madison, Avery, Polk, Allegheny, Catawba, Mecklenburg, Montgomery, Rowan, Yadkin, Forsyth, Caldwell, Cherokee, Iredell, Jackson, Henderson, Yancy, McDowell, Cleveland, Watauga, Wilkes, Lincoln, Union, Stanley, Surrey Davidson, Guilford, Alexander, Anson, Cabarrus, Davie, Stokes, Randolph, Rockingham, Gaston, Swain, Clay, Haywood, Buncombe, Rutherford, Mitchell, Burke, and Ashe, serving Seymour Johnson Air Force Base, Goldsboro, NC, and Fort Bragg, Fayetteville, NC.

HG–37–79 (special certificate—used household goods), filed November 26, 1979. Applicant: PUTNAM MOVING & STORAGE, INC., 302 Via Del Norte, Oceanside, CA 92054. Representative: Larry Scott, Vice President (address same as applicant). Authority sought: Between points in San Diego, Orange, Los Angeles, Riverside, and Imperial Counties, CA, serving Camp Pendleton, Oceanside, CA.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–36856 Filed 11–29–79; 8:45 am]

BILLING CODE 7035–01–M

[No. 37161]

Denver & Rio Grande Western Railroad Co.; Petition for Permission To Cancel Certain Rates on Grain and Grain Products Prescribed in Docket 17000—Part 7

AGENCY: Interstate Commerce Commission.

ACTION: Notice of petition filing.

SUMMARY: The Denver and Rio Grande Western Railroad Company (DRGW), by petition filed April 6, 1979, has requested permission to cancel rates on grain and grain products between points in Utah and Colorado as published in Section 2, Items 300–B through 752–B, Supplement 56 to DRGW freight tariff ICC DRGW 4010 (formerly DRGW freight tariff 7059–E, ICC 1208). These rates were initially prescribed by the Commission in docket No. 17000–7, *Grain and Grain Products Within the Western District and for Export*, 205 I.C.C. 301 (1934). The Commission seeks comments on whether petitioner should be authorized to depart, as requested, from the prior rate prescription. Petitioner asserts that these rates have become obsolete due to general increases and truck and market competition. Following the comment period, the Commission will decide whether to allow the cancellation of the prescribed rates. This notice will be served on the Utilities Commission of the State of Colorado and on the Public Service Commission of the State of Utah.

DATE: Comments on or before December 31, 1979. Comments should be filed under Docket No. 37161.

ADDRESS: Comments should be addresed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 275–7693.

Dated: November 15, 1979.

By the Commission, Division 1, Commissioners Clapp, Trantum, and Alexis.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–36893 Filed 11–29–79; 8:45 am]

BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 232
Friday, November 30, 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).

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1

COUNCIL ON ENVIRONMENTAL QUALITY.

November 27, 1979.

TIME AND DATE: 11:30 a.m., Thursday, December 6, 1979.

PLACE: Conference room, 722 Jackson Place, N.W., Washington, D.C. 20006.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Old business.
2. Briefing by USDOT on status of Administration's transportation initiatives.
3. Briefing on progress on Agricultural Lands Study being prepared by the Council and the Department of Agriculture.
4. Briefing on status of agencies NEPA procedures.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III (202) 395-4616.

[S-2318-79 Filed 11-28-79; 12:36 pm]

BILLING CODE 3125-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 26, 1979, the Corporation's Board of Directors determined, on motion of Director William M. Isaac (Appointive), seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Chairman Irvine H. Sprague, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Bank Hapoalim B.M., a United States branch of a foriegn bank, located at 3 Penn Center Plaza, Philadelphia, Pennsylvania, for Federal deposit insurance; and

Application of the New York Bank for Savings, New York (Manhattan), New York, an insured mutual savings bank, for consent to merge with Guardian Federal Savings and Loan Association, Northport, New York, a Federally insured mutual savings and loan association, under the charter and title of The New York Bank for Savings, and for consent to establish the seven offices of Guardian Federal Savings and Loan Association as branches of the resultant bank; and

Recommendation regarding the liquidation of assests acquired by the Corporation from Franklin National Bank, New York, New York (Case No. 44,133-L).

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Heritage Bank, Anaheim, California, an insured State nonmember bank, for consent to merge with Irvine National Bank, Irvine, California, under the charter and title of Heritage Bank, and for consent to establish the three branches of Irvine National Bank as branches of the resultant bank; and

Application of American Bank of Hollywood, Hollywood, Florida, an insured State nonmumber bank, for consent to purchase certain assests of and assume the liability to pay certain deposits made in the Pembroke Park Office of American Bank of Hallandale, Pembroke Park (P.O. Hallandale), Florida, and for consent to establish said office as a branch of American Bank of Hollywood; and

Recommendation regarding the liquidation of assests acquired by the Corporation from First State Bank of Northern California, San Leandro, California (Case No. 44,063-L); and

Recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, New York (Legal Division memorandum dated November 24, 1979).

The Broard further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Subshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: November 26, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-2313-79 Filed 11-27-79; 5:00 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, November 26, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution proposing the adoption of a model agreement governing the pledge of assets by foreign banks.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

A memorandum from the Executive Secretary's office in connection with a proposed contract with Prentice-Hall for the automation of the printing of the Corporation's loose-leaf reporting service; and

A memorandum from the Division of Bank Supervision dated November 20, 1979 recommending adoption of a Uniform Financial Institutions Rating System; and

A memorandum from the Division of Management Systems and Financial Statistics dated November 20, 1979 requesting authority to conduct a survey regarding Fiduciary Activities of U.S. Banks and Bank Holding Companies at Overseas Locations.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 26, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-2314-79 Filed 11-27-79; 5:00 pm]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: 10:30 a.m., Wednesday, December 5, 1979.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Labor-management relations. Personnel.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-2325-79 Filed 11-28-79; 3:49 pm]

BILLING CODE 6715-01-M

5

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 11 a.m., December 5, 1979.

PLACE: 1700 G Street, N.W., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202-377-6677).

MATTERS TO BE CONSIDERED:

Regulation on consolidation and simplification of branch regulations.

Proposed 1980 Budget of the Office of Neighborhood Reinvestment.

Amendment of Bank Board resolution regarding issuance of commercial paper.

No. 295, November 28, 1979.

[S-2323-79 Filed 11-28-79; 3:22 pm]

BILLING CODE 6720-01-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., December 5, 1979.

PLACE: Room 12126, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Agreement No. 8660-8: Modification of the Latin America/Pacific Coast Steamship Conference Agreement to provide for intermodal movements.
2. Petition of Pacific Coast European Conference for reconsideration of Commission action rejecting the filing of certain tariff matter.
3. Agreement No. 8260-19; Application for extension of intermodal authority of Mediterranean-U.S.A. Great Lakes Conference.
4. Air/Compak Inc.—Application for an independent ocean freight forwarder license.
5. H. K. International Forwarding, Inc.—Application for independent ocean freight forwarder license.
6. Refrigerated Express Lines—Petition for Commission action regarding alleged discrimination in the Australian trade.
7. Docket No. 78-33: Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Ecuador Trade—Status report.
8. Docket No. 78-46: Financial Exhibits and Schedules of Common Carriers in the Domestic Offshore Trades—Review of comments.

Portion Closed to the Public

1. Docket No. 77-56: West Gulf Maritime Association v. City of Galveston (Board of Trustees of the Galveston Wharves)—Petition for reconsideration of Commission decision.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-2315-79 Filed 11-28-79; 1:57 pm]

BILLING CODE 6730-01-M

7

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

November 27, 1979

TIME AND DATE: 10 a.m., Tuesday, December 4, 1979.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following: 1. Old Ben Coal Company, VINC 74-11, IBMA 75-52.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-2319-79 Filed 11-28-79; 1:57 pm]

BILLING CODE 6820-12-M

8

FEDERAL RESERVE SYSTEM, Board of Governors.

TIME AND DATE: 10 a.m., Wednesday, December 5, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed uniform interagency system for rating the performance and financial condition of financial institutions.
2. Proposed supervisory policy on the purchase and sale of U.S. Government guaranteed loans by financial institutions.

Discussion Agenda

1. Proposed statement to be presented to the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing, and Urban Affairs regarding legislation to amend the Consumer Credit Protection Act to restrict the use of the "Rule of 78's".
2. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 27, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2312-79 Filed 11-27-79; 4:39 pm]

BILLING CODE 6210-01-M

9

FEDERAL RESERVE SYSTEM, Board of Governors.

TIME AND DATE: Approximately 11 a.m., Wednesday, December 5, 1979 (following a recess at the conclusion of an open meeting to be held earlier the same day).

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 27, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2317-79 Filed 11-28-79; 10:43 am]

BILLING CODE 6210-01-M

10

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, December 6, 1979.

PLACE: Room 532 (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED:

Portions Open to Public

(1) Oral Argument in Heublein, Inc., et al. Docket 8904.

Portions Closed to the Public

(2) Executive Session to discuss Oral Argument in Heublein, Inc., et al. Docket 8904.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523–3830; recorded message: (202) 523–3806.

[S–2316–79 Filed 11–28–79; 10:43 am]

BILLING CODE 6750–01–M

11

FOREIGN CLAIMS SETTLEMENT COMMISSION.

[F.C.S.C. Meeting Notice No. 11–79]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wednesday, December 5, 1979 at 10:30 a.m.—Canceled.

Wednesday, December 12, 1979 at 10:30 a.m.—Canceled.

Wednesday, December 19, 1979 at 10:30 a.m.—Canceled.

Wednesday, December 26, 1979 at 10:30 a.m.—Canceled.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, N.W.; Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111–20th Street, N.W., Washington, D.C. 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on November 26, 1979.

Francis T. Masterson,

Executive Director.

[S–2320–79 Filed 11–28–79; 1:57 pm]

BILLING CODE 6770–01–M

12

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: November 28 and 29, 1979 (changes).

PLACE: Commissioners conference room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Wednesday, November 28; 2:30 p.m.

Briefing on Point Beach 2.206 Petition (approximately 1½ hours, public meeting) additional item.

Thursday, November 29; 9:30 a.m.

1. Affirmation OR Discussion and Vote (approximately ½ hour): Plans for coping with emergencies at production and utilization facilities (as announced, public meeting).

2. Discussion of personnel matter (approximately 2 hours, closed—Ex. 6) as announced.

Thursday, November 29; 1:30 p.m.

1. Briefing on TMI–2 Clean-up (approximately 1 hour, public meeting) additional item.

ADDITIONAL INFORMATION: On Monday, November 26, the Commission affirmed "Disposal of High-Level Radioactive Wastes—Procedural Aspects", previously scheduled for Thursday, November 29. By a vote of 3–0 (Chairman Hendrie and Commissioner Kennedy not present) determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules that Commission business required that this item be held on less than one week's notice to the public.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

November 27, 1979.

[S–2321–79 Filed 11–28–79; 3:22 pm]

BILLING CODE 7590–01–M

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NUCLEAR REGULATORY COMMISSION.

DATE: December 3, 1979.

PLACE: Commissioners conference room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Monday, December 3; 2:00 p.m.

1. Briefing on scope of issues involved in setting standards for licensee technical specifications and implementation (approximate 1 hour, public meeting).

2. Affirmation or discussion and vote (if required) on use of shorter pilings at Bailly (approximately ½ hour, open/closed status to be determined).

3. Affirmation of UCS Petition on Fire Prot. and Elec. Connectors (tentative) (approximate 5 minutes, public meeting).

4. Discussion of personnel matter (approximate 1½ hours, closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Roger M. Tweed,

Office of the Secretary.

November 26, 1979.

[S–2322–79 Filed 11–28–79; 3:22 pm]

BILLING CODE 7590–01–M

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SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 3, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, December 4, 1979, at 9:00 a.m. and on Wednesday, December 5, 1979, immediately following the 9:30 a.m. open meeting.

An open meeting will be held on Wednesday, December 5, 1979, at 9:30 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 4, 1979, at 9:00 a.m., will be:

Legislative and regulatory matters bearing enforcement implications.

The subject matter of the open meeting scheduled for Wednesday, December 5, 1979, at 9:30 a.m., will be:

1. Consideration of whether to publish for comment proposed rules regarding requests for confidential treatment of records obtained by the Commission. The rules are designed to allow persons who submit records to the Commission to assert a claim that disclosure of the records would not be required under the Freedom of Information Act. The release being considered would provide that the proposed rules are, with certain exceptions, applicable on an interim basis until final rules are issued. For further information, please contact Mitchell D. Dembin at (202) 272-2443.

2. Consideration of whether to publish for comment proposed Rule 11Aa3-2 under the Securities Exchange Act of 1934, which would establish procedures and requirements for industry plans governing planning, developing, operating or regulating a national market system or one or more facilities thereof. For further information, please contact Stephen L. Parker at (202) 272-2890.

3. Consideration of whether to issue a release presenting the results of the Commission's survey of exchange members which was designed: (a) to gather data regarding the nature and extent of money management and exchange brokerage services rendered by those members and their affiliates to discretionary institutional accounts; and (b) to measure the impact of Section 11(a) of the Securities Exchange Act of 1934 and Temporary Rule 11a2-2(T) thereunder on those activities. For further information, please contact Joseph Meiburger at (202) 523-5497 or Arnold Dean at (202) 272-2838.

4. Consideration of whether to determine an effective date for a registration statement filed under the Securities Act of 1933 on Form S-1 by Nationwide Life Insurance Company (File No. 2-64559). The filing registers the fixed portions of certain of Nationwide's Individual Deferred Annuity Contracts. For further information, please contact Melville B. Cox, Jr. at (202) 272-2060.

5. Consideration of whether to issue a release requesting public comment on the overall re-evaluation of the Guides for Preparation and Filing of Registration Statements and Reports. For further information, please contact Catherine Collins, or Bruce S. Mendelsohn at (202) 272-2589.

The subject matter of the closed meeting scheduled for Wednesday, December 5, 1979, immediately following the 9:30 a.m. open meeting, will be:

Litigation matter.

Administrative proceeding of an enforcement nature.

Extension of time.

Formal order of investigation and access to investigative files by Federal, State, or Self-Regulatory Authorities.

Institution and settlement of administrative proceeding of an enforcement nature.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

November 28, 1979.

[S-2324-79 Filed 11-28-79; 3:22 pm]

BILLING CODE 8010-01-M

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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

ENVIRONMENTAL PROTECTION AGENCY

45624 8-3-79 / Emission standards for medium and heavy trucks; applicability to motor homes

64078 11-6-79 / Sugar processing point source category; effluent limitations guidelines

FEDERAL TRADE COMMISSION

50218 8-27-79 / Standards for labeling and advertising of home insulation

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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

62804 10-31-79 / Policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped; implementation of the Architectural Barriers Act of 1968

INTERIOR DEPARTMENT

Office of the Secretary—

62510 10-31-79 / Indian preference in employment, training and subcontracting

Rules Going Into Effect Saturday, December 1, 1979

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

65055 11-9-79 / Budget-type certificate applications—gas purchase facilities

SECURITIES AND EXCHANGE COMMISSION

48659 8-20-79 / Pricing of investment company shares generally

61944 10-29-79 / Reports of compliance examinations of municipal securities broker and dealers; availability of copies of Municipal Securities Rulemaking Board

Rules Going Into Effect Sunday, December 2, 1979

AGRICULTURE DEPARTMENT

Federal Grain Inspection Service—

52838 9-11-79 / Fees for original online grain inspection services and mileage costs

List of Public Laws

Last Listing November 29, 1979

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 4167 / Pub. L. 96-127 To amend section 201 of the Agricultural Act of 1949, as amended, to extend until September 30, 1981, the requirement that the price of milk be supported at not less than 80 per centum of the parity price therefor. (Nov. 28, 1979; 93 Stat. 981) Price $.75.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: Dec. 14; Jan. 11 and 25; at 9 a.m. (identical sessions)

WHERE: Office of the Federal Register, Room 9409, 1100 L Street N.W., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235 or Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

DALLAS, TEXAS

WHEN: December 8, 1979 at 9:30 a.m.

WHERE: Dunfey Dallas Hotel
3800 West Northwest Highway
Dallas, Texas

RESERVATIONS: Call Mary Peters (214) 445–0855

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Federal Register

Book 2 of 2 Books
Friday, November 30, 1979

Part II—Labor/ESA:
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Part III—EPA:
Protection of Visibility

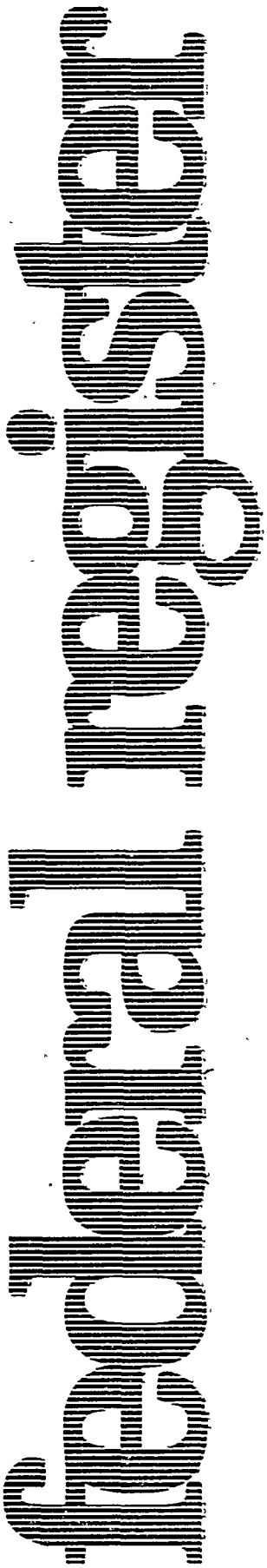
Part IV—EPA:
National Visibility Goal for Federal Class I Areas

Part V—USDA/FmHA:
Rural Housing; Proposed Revisions and Redesignation of Rules

Part VI—Interior-FWS:
Virginia and Ozark Big-Eared Bats, Endangered Species

Part VII—HEW/NIH:
Recombinant DNA Research; Meeting, Proposed Actions and Guidelines

Part VIII—USDA/FNS:
Special Supplemental Food Program for Women, Infants and Children; Proposed Changes in Requirements



Friday
November 30, 1979

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Missouri	MO79–4095.
New Jersey	NJ79–3052.

Modifications To General Wage Determination Decisions

Alabama	AL79–1114	July 27, 1979.
Arkansas	AR79–4052	March 30, 1979.
	AR79–4054	March 30, 1979.
Florida	FL79–1017	January 26, 1979.
Mississippi	MS–79–1126	September 14, 1979.
	MS79–1127	September 14, 1979.
Nevada	NV79–5102	March 9, 1979.
North Carolina	NC79–1125	September 7, 1979.
Oklahoma	OK79–4023	February 2, 1979.
	OK78–4059	June 16, 1978.
	OK78–4062	June 16, 1978.
	OK79–4073	August 3, 1979.
	OK79–4074	August 3, 1979.
	OK79–4076	August 17, 1979.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Maryland	MD78–3020 (MD79–3031).	April 14, 1978.
North Carolina	NC77–1076 (NC79–1154).	June 10, 1977.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 23rd day of November 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

NEW DECISION

STATE: Missouri COUNTIES: Boone, Cooper, and Howard

DECISION NO. MO79-4095 DATE: Date of Publication

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.27	.60	1.55		.05
BOILERMAKERS	12.00	1.15	1.00		.03
BRICKLAYERS; STONEMASONS & TILE LAYERS	10.60		.35		
CARPENTERS:					
Carpenters	10.35	.33	.25		
Millwrights	11.00	.33	.25		
Piledrivers	10.75	.33	.25		
CEMENT MASONS	11.05				
ELECTRICIANS:					
Boone & Howard Counties:					
Electricians	12.53	.47	3%	7%+.30	.01
Cable Splicers	12.78	.47	3%	7%+.30	.01
Cooper County:					
Electricians (contracts exceeding 2000 man hours	13.38	.69	3%+.70	.95	.12
Electricians (contracts not exceeding 2000 man hours)	11.78	.69	3%+.70	.95	.12
ELEVATOR CONSTRUCTORS:					
Cooper & Howard Counties Elevator Constructors	12.71	.895	.69	3%+a	.025
Boone County Elevator Constructors	11.38	.895	.69	3%+a	.025
ELEVATOR CONSTRUCTORS HELPERS	70%JR	.895	.69	3%+a	.025
ELEVATOR CONSTRUCTORS HELPERS (probationary)	50%JR				
GLAZIERS:					
Cooper & Howard Counties	11.18	.61	1.04	19.7%	.04
IRONWORKERS:					
Cooper & Howard Counties	11.60	.75	1.40	1.00	.05
Boone County	12.07	.55	1.05		.09
LABORERS:					
General Laborer; Watchman; Flagmen; Heaters; Material Plant Man; Carpenter Tender; Landscaper; Signalman; Wrecker (old/new structures); Form Handler; Post hole Digger; Cleaning & clearing of all debris for all crafts;					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONTD.)					
Loading & unloading, conveying, distributing, collecting & hoisting of construction material & debris; Backfilling, grading & landscaping; Covering of tanks, structures & material piles with tarpaulins or other material handled by Laborers; Handling & cleaning of concrete chutes; Cleaning of concrete spills & chipping where hand tools are required	8.60	.50	.25		
First Semi-Skill All tools run by gas, electricity or air; Air compressors; motor buggies; Pumps; Unloading & handling steel; Jackhammer & Chipping Tool Operator; Concrete Mixer-Operator (up to & including two-bag capacity)	8.75	.50	.25		
Second Semi-Skill Brick Mason, Plasterer & Cement Finishers, Tenders & Mortarmen; Scaffold Builders for Brick, Plasterer & Cement Masons; Forklifts; Concrete Pumps; Tile Layers, Bottom Men, Sewers & Drains; Cutting Torch; Trench or Pier Holes 12' or over; Wagon Drill, Air Track or any Mechanical Drill; Powder Man; Laborers working for Mechanic & Electrical Contractors (including but not limited to, digging of all trenches					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONTD.)					
ditches, holes; paving of concrete & cleaning of all trash); Paving Breaker; Laser Beam Man	$8.85	.50	.25		
LATHERS	10.85				
LINE CONSTRUCTION:					
Line Man & Cable Splicers	12.16	.50	3%	12½%	½%
Groundman; Winch Drivers	8.93	.50	3%	12½%	½%
Groundman Driver	8.61	.50	3%	12½%	½%
Equipment Operator	10.87	.50	3%	12½%	½%
Groundman 1st 6 months	6.91	.50	3%	12½%	½%
Groundman next 12 months	7.20	.50	3%	12½%	½%
Groundman next 12 months	7.90	.50	3%	12½%	½%
Groundman thereafter	8.61	.50	3%	12½%	½%
PAINTERS:					
Boone & Howard County:					
Brush	10.20		.20		
Spray; Structural Steel, Sandblasting	10.70		.20		
Cooper County:					
Brush	10.75				
Spray	11.75				
PLASTERERS	10.05				
PLUMBERS & PIPEFITTERS	12.36	.30	.65		.05
POWER EQUIPMENT OPERATORS:					
Cooper & Howard Counties:					
Master Mechanic	13.20	.75	1.00	.75	.10
Crane-Tower or climbing	12.70	.75	1.00	.75	.10
GROUP I					
Asphalt paver & spreader; asphalt plant mixer operator; asphalt plant operback fillers; backhoe, all types; Barber-greene loader (similar type); Blade-power, all types; Boats-power; Boilers (2) boring machines (all types); Cableways; Cherry pickers (all types); Chip spreader; Concrete ready-mixed plant, portable (job site); Concrete mixer paver; Crane-overhead; crusher, rock; derricks & derrick					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONTD.)					
GROUP I (CONTD.)					
cars (power operated); Ditching machines; Dozers; Dredges-any type power; Gradeall-similar type; hoist; endless chain power oper: with power travel; loaders; all types; Mechanic & Welder; Mucking machine; Orange peels; pumps-material-all types; Push Cats; Scoops-all types; self-propelled rotary drill; shovel power; Side Boom; skimmer scoop; Test-hole machine; Throttle man.	$12.20	.75	1.00	.75	.10
Group II					
Boilers (1); Brooms-power oper. (all types); Chip spreader (front man); Clef Plane oper.; Compressor (1) 105' or over; Compressors (2) 105' or over not more than 20' apart; Compressors-tandem (any sizes); Compressors single, truck mounted; Concrete saws, self-propelled; Crab-power oper.; Curb Finishing machine; Elevator, Finishing machine; Firemen on rigs; Flex plane; Floating machine form grader; Greaser; Hoist; endless chain-power operated; Hopper-power operated; Hydra hammer (all types); Lad-a-vator-similar type; Rollers-all types; Siphons, Jets & Jennies; Sub grader; Tractors over 50 H.P.	11.85	.75	1.00	.75	.10

POWER EQUIPMENT OPERATORS GROUP III	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Oiler	$9.45	.75	1.00	.75	.10
Fork lift-masonry; oiler driver-all types A frame trucks; forklift-all types & sizes except masonry; mixers (with side loaders); pumps (with well points) dewatering system, test or pressure pumps; Tractors (except when hauling material) less than 50 H.P.	9.95	.75	1.00	.75	.10
Clamshells, 80 ft. of boom or over (incl. jib); crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 80 ft. of boom or over (incl. jib); Pile drivers, 80 ft. of boom or over (incl. jib)	10.20	.75	1.00	.75	.10
Hoists-each additional drum over 1 drum	12.45	.75	1.00	.75	.10
Crane or rigs, over 200 ft. of boom	12.10	.75	1.00	.75	.10
Ready Mixed Concrete Plants: Crane Operator	12.70	.75	1.00	.75	.10
Loader operator & plant man	11.95	.75	1.00	.75	.10
Conveyor operator	11.70	.75	1.00	.75	.10
POWER EQUIPMENT OPERATORS: Boone County; Group I Backhoe; cableway; crane, crawler or truck; crane, hydraulic truck or cruiser mounted 16 tons & over; crane, locomotive, derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted;	9.70	.75	1.00	.75	.10

POWER EQUIPMENT OPERATORS (GROUP I CONTD.):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
locomotive, gas, steam & other powers; piledriver, land or floating: scoop, skimmer; shovel, power (steam, gas, electric or other powers); switch boat; whirley	$12.12	.75	1.00		
Group II Air tugger w/air compressor; anchor placing barge; asphalt spreader; Athey force feeder loader (self-propelled); backfilling machine; boat oper. push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixermobile; compressor (when operator runs throttle); compressors, two not more than 50' apart; compressor-generator combination; compressor pump combination; compressor welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumperete machine; concrete spreader; conveyor, large (not self-propelled) hoisting or moving brick & concrete into, or into & on floor level, one or both; crane, hydraulic rough terrain, self-propelled; crane, hydraulic truck or cruiser					

POWER EQUIPMENT OPERATORS (GROUP II CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
mounted under 16 tons; drilling machines; self-powered, used for earth or rock drilling or boring (Wagon drills & any hand-drills obtaining power from other sources including concrete breakers, jackhammers & Barco equipment no engineer required); elevating grader, engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; fork lift; grader road with power blade; highlift; hoist, concrete & brick (brick cages or concrete skips operating in or on tower, tower-mobile, or similar equipment); hoist, stack; hydrohammer; lad-a-vator, hoisting brick or concrete; loading machine (such as Barber-Greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix job site; plant, heating job site; plant, mixing job site; plant, power, generating job site; pumps, two self-power, over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-Track;					

POWER EQUIPMENT OPERATORS (GROUP II CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
roller; asphalt, top or subgrade; scoop; tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler; or wheel type with or without power unit, power take offs; & attachments regardless of size; trenching machine, tunnel boring machine; vibrating machine; automatic, propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size);					
Well drilling machine	$12.12	.75	1.00		
GROUP III					
Air tugger w/plant air; Boiler, for power or heating shell of buildings or temporary enclosures in connection with construction work; boiler, temporary; compressor; air one; compressor, air (mounted on truck); concrete saw; (self-propelled) conveyor large (not self-propelled) conveyor, large (not self-propelled); conveyor, large (not self-propelled moving brick & concrete (distributing) on floor level; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30kw or any number developing over 30kw;					

POWER EQUIPMENT OPERATORS (GROUP III CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one Employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixers, with side loader, 2 bag capacity or more mixer, with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pug mill operator; pump, sump-self powered, automatic controlled over 2" during use in connection with construction work; scissor lift (used for hoisting); sweeper, street; tractor small wheel type 50 h.p. & under with grader blade & similar equipment; welding machine, one over 400 amp.; winch operating from truck; mechanic in shop	$10.87	.75	1.00		
Group IV					
Boat operator outboard motor (job site); conveyors, (such as conveay-it) regardless of how used; oiler; sweeper, floor	10.27	.75	1.00		
Group V					
(a) Air-pressure; oiler engineer operating under ten pounds	12.82	.75	1.00		

POWER EQUIPMENT OPERATORS (GROUP V CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
(b) Air-pressure, oiler engineer operating over ten pounds	$13.67	.75	1.00		
(c) Air-pressure engineer operating under ten pounds	14.12	.75	1.00		
(d) Air-pressure oiler engineer operating over ten pounds	14.87	.75	1.00		
(e) Crane, climbing (such as linden); crane, pile driving & extracting; crane, using rock socket tool; derrick, diesel, gas or electric, hoisting material erecting steel (150' or more above ground); dragline, 7 cu. yds. & over; hoist, three or more drums in use; scoop, tandem; shovel, power 7 cu. yds. & over; tractor, tandem crawler tunnel man assigned to work in tunnel or tunnel shaft; wrecking, when machine is working on second or higher; crane-booms (including jib) 100 ft. to 150 ft.	12.62	.75	1.00		
Crane, boom (including jib) 150 ft. to 300 ft.	13.12	.75	1.00		
ROOFERS:					
Roofers	11.20		.35	.30	
Roofers in Coal Tar Pitch	11.70		.35	.30	
SHEET METAL WORKERS:					
Boone & Cooper Counties	11.26	.50	.36		.05
Howard County	12.83	.75	1.10		.08
SPRINKLER FITTERS	13.81	.75	1.05		.12

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also 7 Paid Holidays.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (ii).

NEW DECISION

STATE: NEW JERSEY COUNTY: MORRIS
DECISION NO.: NJ79-3052 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING AND HEATING MECHANICS	7.76				
CARPENTERS	11.70	8%	7%		1/5%
CEMENT MASONS:					
Zone 1 - Pompton Plains, Pequannock, Lincoln Park, Kinnelon, Butler & Riverdale	12.10	.84	.90		.02
Zone 2 - Gillette and Sterling	11.80	.95	1.00		.02
Zone 3 - Stephensburg, Pleasant Grove, Middle Valley, and Parker Twps.	12.04	.85	.75		.11
Zone 4 - Remainder of County:					
Single family homes, duplexes, townhouses, and apartments of one or two stories	8.99	.65	.60		.04
All other residential construction	12.28	.75	.70		.04
ELECTRICIANS	7.66				
LABORERS	6.50				
PLUMBERS	8.00				
ROOFERS	13.61	1.00	1.00		
TRUCK DRIVERS	6.00				
POWER EQUIPMENT OPERATORS:					
Backhoes	13.81	7%	10%	5%	3%
Bulldozers	7.10				
Loaders	6.75				

MODIFICATION PAGE 1

Decision #AL79-1114-Mod. #2.
(44 FR 44407-July 27,1979)
Etowah County, Alabama

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$12.46	.55	.80		.05
Plumbers and pipefitters	12.30	.50	.55	a	.07
Sprinkler fitters	11.94	.75	1.05		.08

MODIFICATION PAGE 2

DECISION #AR79-4052 - Mod. No. 4 (44 FR 19103 - March 30, 1979) Pulaski County, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos workers	$11.80	.55	1.00		.02
Bricklayers-Stonemasons	10.00	.65	.35		.04
CARPENTERS:					
Carpenters	9.85	.50	.50		.05
Millwrights & Piledrivermen	10.35	.50	.50		.05
Ironworkers	10.70	.45	.85		.04
LINE CONSTRUCTION:					
Linemen	13.075		3%		3/8%
Cable splicers	13.20		3%		3/8%
Operator	13.075		3%		3/8%
Groundmen	65%JR		3%		3/8%
Winch equipment	73%JR		3%		3/8%
Marble, tile and terrazzo workers	9.00				
PAINTERS:					
Painters, paperhangers & cleaners, sheet rock finishers and wall cover hangers	9.05		.40		.02
Spray gun operators and blasterers	9.65		.40		.02
All skelton steel and all work on stages, structural steel over 30 feet high	9.30		.40		.02
PLUMBERS & PIPEFITTERS:					
Within 10 mile radius of Pulaski Courthouse	12.10	.60	.75		.05
Over 10 miles from Pulaski County Courthouse	12.40	.60	.75		.05
POWER EQUIPMENT OPERATORS:					
Group I	11.16	.40	.40		.05
Group II	10.13	.40	.40		.05
Group III	9.65	.40	.40		.05
Group IV	7.97	.40	.40		.05
Roofers	9.71		.30		
Sheet metal workers	11.57	.55	3%+.72		.04
Sprinkler fitters	11.69	.75	1.05		.08

MODIFICATION PAGE 3

DECISION #AR79-4054 - Mod. #2 (44 FR 19104 - March 30, 1979) Sebastian, Crawford and Washington Counties, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: (Sebastian & Crawford)					
Asbestos workers	$12.60	.55	.85		.015
Bricklayers-Stonemasons	10.00	.65	.35		.04
ELECTRICIANS:					
Electricians	11.86	.50	3%+5.5%		1/2%
Cable splicers	12.11	.50	3%+5.5%		1/2%
Ironworkers	11.30	.75	.65		.12
LINE CONSTRUCTION:					
Lineman; operator	10.21	.50	3%+5.5%		1/4%
Cable splicers	10.76	.50	3%+5.5%		1/4%
Powderman	90%JR	.50	3%+5.5%		1/4%
Truck driver	75%JR	.50	3%+5.5%		1/4%
Groundman	65%JR	.50	3%+5.5%		1/4%
PAINTERS:					
Brush painters	7.50				
Roller work, sheetwork, finishing by machinery	7.75				
Spray painting	8.50				
Sandblasting-steam cleaning	8.50				
All pipe and steel	8.25				
All mitten & glove painting	8.50				
PLUMBERS & STEAMFITTERS	11.06	.45	.55		.04
POWER EQUIPMENT OPERATORS:					
Group I	11.16	.40	.40		.05
Group II	10.13	.40	.40		.05
Group III	9.65	.40	.40		.05
Group IV	7.97	.40	.40		.05
ROOFERS	9.71		.30		
SHEET METAL WORKERS	11.57	.55	3%+.72		.04
SPRINKLER FITTERS	11.69	.75	1.05		.08
CHANGE: (WASHINGTON COUNTY)					
Electricians	11.86	.50	3%+5.5%		1/2%
Sheet metal workers	11.57	.55	3%+.72		.04
Sprinkler fitters	11.69	.75	1.05		.08

MODIFICATION PAGE 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #FL79-1017-Mod. #5 (44-FR-5604-January 26,1979) Duval County, Florida					
Change:					
Carpenters, Acoustical Ceiling & Drywall Installers	9.52	.65	.60		.05
Plasterers	9.00	.40	.30		
Decision #MS79-1126 - Mod. #1 (44 FR 53657 - September 14, 1979) Hinds County, Mississippi					
CHANGE:					
Asbestos workers	$11.29	.45	.50		
Plumbers, steamfitters, pipefitters	11.28	1.05	1.00		
Sprinkler fitters	11.94	.75	1.05		.08
Decision #MS79-1127 - Mod. #1 (44 FR 53659 - September 14, 1979) Warren County, Mississippi					
CHANGE:					
Asbestos workers	$11.29	.45	.50		
Sprinkler fitters	11.94	.75	1.05		.08
POWER EQUIPMENT OPERATORS:					
Group I	10.53	.50	.30		.05
Group II	9.73	.50	.30		.05
Group III	9.48	.50	.30		.05
Group IV	8.88	.50	.30		.05
Group V	7.23	.50	.30		.05

MODIFICATION PAGE 5

DECISION #NV79-5102-Mod. #3 (44 FR 13221-March 9, 1979) Clark County (does not include the Nevada Test Site), Nevada	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$15.21	$1.175	$1.25	$1.00	.04
Bricklayers; Stonemasons	13.87	.90	.60		.06
Cement Masons:					
Cement Masons	13.00	1.10	1.00		.13
Cement Floor Finishing Machine; Color Work	13.35	1.10	1.00		.13
Laborers:					
Group 1	10.80	.81	1.53		
Group 2	11.01	.81	1.53		
Group 3	11.11	.81	1.53		
Group 4	11.20	.81	1.53		
Group 5	11.30	.81	1.53		
Marble Masons	13.87	.90	.60		.06
Plasterers	13.49	1.10	1.00		.13
Plumbers; Steamfitters	13.75	1.25	2.50	2.00	.08
Roofers	15.70	.80			
Soft Floor Layers	14.87	.65			.15
Sprinkler Fitters	16.97	.75	1.05		.08
Terrazzo Workers, Tile Setters	13.87	.90	.60		.06
Truck Drivers:					
Group 1	11.17	.68	1.12		
Group 2	11.28	.68	1.12		
Group 3	11.33	.68	1.12		
Group 4	11.49	.68	1.12		
Group 5	11.67	.68	1.12		
Group 6	12.17	.68	1.12		

DECISION #NC79-1125 - Mod. #1
(44 FR 52577 - September 7, 1979)
Statewide, North Carolina

Change:
Description of work to read: Water and Sewer Construction Projects; and Heavy Construction Projects excluding Dam Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

DECISION #OK79-4023 - Mod. #5
44 FR 6881-February 2, 1979
Comanche County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT:					
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS ISSUED IN ORIGINAL DECISION					
ADD:					
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS FOLLOWS:					
POWER EQUIPMENT OPERATORS:					
GROUP I	$12.55	.70	.50		.12
GROUP II	12.05	.70	.50		.12
GROUP III	11.55	.70	.50		.12
GROUP IV	11.30	.70	.50		.12
GROUP V	12.05	.70	.50		.12
GROUP VI	10.80	.70	.50		.12
GROUP VII	10.55	.70	.50		.12
GROUP VIII	9.55	.70	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
All crane type equipment with 300' of boom or over (including jib)

GROUP II
All crane type equipment with 100-200' of boom (including jib)

GROUP III
All crane type equipment with 100-200' of boom(including jib), all tower cranes and all crane type equipment of 3 cu.yd. or more

GROUP IV
Sideboom (booms 30' and over); Guy Derrick

GROUP V
Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant op.; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade)

GROUP VI
Fork lift (35' & over); dozer (engine h.p. 65 or over); Fordson tractor or like quipment with hoe or loader equipment or ditcher; scraper type equipment; loader op. of hi-lift (engine h.p. 65 or over); asphalt lay machine; tail toom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump - boom type

DECISION NO. OK79-4023 - Mod. #5 Page 2

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VII
Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 5, 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with a Frame; roller, all types; outside elevator or building type of personnel hoist; concrete buster or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when & if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII
Permanent elevator-building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. & under (1 or 2); welding machine (1 or 2); pump (1 or 2); greaser; tilt top trailer op.; fuelman; truck crane oiler driver or crane oiler; conveyor op.-single-continuous belt bulk handling; asphalt lay machine back end man

'Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii).

DECISION #OK78-4059 - Mod. #6
43 FR 26258 - June 16, 1978
Wagoner County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Glaziers	$10.49	.70	.30		.01
Laborers:					
Group I	7.35	.25	.40		
Group II	7.65	.25	.40		
Group III	7.85	.25	.40		
Sprinkler fitters	12.79	.75	1.05		.08

OMIT:
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS ISSUED IN ORIGINAL DECISION.

ADD
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS FOLLOWS

Group I	12.55	.70	.50		.12
Group II	12.05	.70	.50		.12
Group III	11.55	.70	.50		.12
Group IV	11.30	.70	.50		.12
Group V	12.05	.70	.50		.12
Group VI	10.80	.70	.50		.12
Group VII	10.55	.70	.50		.12
Group VIII	9.55	.70	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
All crane type equipment with 300' of boom or over (including jib)

GROUP II
All crane type equipment with 100-200' of boom (including jib)

GROUP III
All crane type equipment with 100-200' of boom(including jib), all tower cranes and all crane type equipment of 3 cu.yd. or more

GROUP IV
Sideboom (booms 30' and over); Guy Derrick

GROUP V
Heavy duty mechanic; welder; crane-hook and overhead mohorail; whirley; panel board batch plant op.; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade)

DECISION NO. OK78-4059 - Mod. #6 Page 2

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VI

Fork lift (35' & over); dozer (engine h.p. 65 or over); Fordson tractor or like quipment with hoe or loader equipment or ditcher; scraper type equipment; loader op. of hi-lift (engine h.p. 65 or over); asphalt lay machine; tail toom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump - boom type

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 5, 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with a Frame; roller, all types; outside elevator or building type of personnel hoist; concrete buster or tamper; heaters under jurisdiction of operating engineerp; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when & if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator-building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. & under (1 or 2); welding machine (1 or 2); pump (1 or 2); greaser; tilt top trailer op.; fuelman; truck crane oiler driver or crane oiler; conveyor op.-single-continuous belt bulk handling; asphalt lay machine back end man

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii).

DECISION #OK78-4062-Mod. #7
43 FR 26265-June 16, 1978
Pittsburg County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Asbestos workers	$12.60	.55	.85		.015
Bricklayers-Stonemasons	11.25	.60	.40		.05
ELECTRICIANS:					
Electricians	12.15	.59	3%+.58		.06
Cable splicers	12.40	.59	3%+.58		.06
Glaziers	10.49	.70	.30		.01
LABORERS:					
Group I	6.95	.25	.40		
Group II	7.25	.25	.40		
Group III	7.45	.25	.40		
Sprinkler fitters	12.79	.75	1.05		.08

OMIT:

POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS ISSUED IN ORIGINAL DECISION

ADD:

POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS FOLLOWS:

Group I	12.55	.70	.50		.12
Group II	12.05	.70	.50		.12
Group III	11.55	.70	.50		.12
Group IV	11.30	.70	.50		.12
Group V	12.05	.70	.50		.12
Group VI	10.80	.70	.50		.12
Group VII	10.55	.70	.50		.12
Group VIII	9.55	.70	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I

All crane type equipment with 300' of boom or over (including jib)

GROUP II

All crane type equipment with 100-200' of boom (including jib)

GROUP III

All crane type equipment with 100-200' of boom(including jib), all tower cranes and all crane type equipment of 3 cu.yd. or more

GROUP IV

Sideboom (booms 30' and over); Guy Derrick

GROUP V

Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant op.; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade)

DECISION NO. OK78-4062 - Mod. # 7 Page 2

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VI

Fork lift (35' & over); dozer (engine h.p. 65 or over); Fordson tractor or like quipment with hoe or loader equipment or ditcher; scraper type equipment; loader op. of hi-lift (engine h.p. 65 or over); asphalt lay machine; tail toom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump - boom type

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 5, 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A Frame; roller, all types; outside elevator or building type of personnel hoist; concrete buster or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when & if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator-building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. & under (1 or 2); welding machine (1 or 2); pump (1 or 2); greaser; tilt top trailor op.; fuelman; truck crane oiler driver or crane oiler; conveyor op.-single-continuous belt bulk handling; asphalt lay machine back end man

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii).

DECISION #OK79-4073 - Mod. #3

44 FR 45863-August 3, 1979
Garfield County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT: POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS ISSUED IN ORIGINAL DECISION					
ADD: POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS FOLLOWS:					
GROUP I	$12.55	.70	.50		.12
GROUP II	12.05	.70	.50		.12
GROUP III	11.55	.70	.50		.12
GROUP IV	11.30	.70	.50		.12
GROUP V	12.05	.70	.50		.12
GROUP VI	10.80	.70	.50		.12
GROUP VII	10.55	.70	.50		.12
GROUP VIII	9.55	.70	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I

All crane type equipment with 300' of boom or over (including jib)

GROUP II

All crane type equipment with 100-200' of boom (including jib)

GROUP III

All crane type equipment with 100-200' of boom(including jib), all tower cranes and all crane type equipment of 3 cu.yd. or more

GROUP IV

Sideboom (booms 30' and over); Guy Derrick

GROUP V

Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant op.; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade)

GROUP VI

Fork lift (35' & over); dozer (engine h.p. 65 or over); Fordson tractor or like quipment with hoe or loader equipment or ditcher; scraper type equipment; loader op. of hi-lift (engine h.p. 65 or over); asphalt lay machine; tail toom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump - boom type

DECISION NO. OK79-4073 - Mod. #3 Page 2

GROUP VII
Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 5, 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with a Frame; roller, all types; outside elevator or building type of personnel hoist; concrete buster or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when & if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII
Permanent elevator-building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. & under (1 or 2); welding machine (1 or 2); pump (1 or 2); greaser; tilt top trailer op.; fuelman; truck crane oiler driver or crane oiler; conveyor op.-single-continuous belt bulk handling; asphalt lay machine back end man

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii).

DECISION #OK79-4074-Mod. #3
44 FR 45864 - August 3, 1979
Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Logan, Lincoln, McClain, Grady, Seminole & Pottawatomie Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
SHEET METAL WORKERS	$12.20	.60	1.23		.05

DECISION #OK79-4076 - Mod. #3
44 FR 48585-August 17, 1979
Latimer, LeFlore, Haskell,, Sequoyah & Pushmataha Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT:					
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS ISSUED IN ORIGINAL DECISION					
ADD:					
POWER EQUIPMENT OPERATORS SCHEDULE AND RATES AS FOLLOWS:					
POWER EQUIPMENT OPERATORS:					
GROUP I	$12.55	.70	.50		.12
GROUP II	12.05	.70	.50		.12
GROUP III	11.55	.70	.50		.12
GROUP IV	11.30	.70	.50		.12
GROUP V	12.05	.70	.50		.12
GROUP VI	10.80	.70	.50		.12
GROUP VII	10.55	.70	.50		.12
GROUP VIII	9.55	.70	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
All crane type equipment with 300' of boom or over (including jib)

GROUP II
All crane type equipment with 100-200' of boom (including jib)

GROUP III
All crane type equipment with 100-200' of boom(including jib), all tower cranes and all crane type equipment of 3 cu.yd. or more

GROUP IV
Sideboom (booms 30' and over); Guy Derrick

GROUP V
Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant op.; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade)

GROUP VI
Fork lift (35' & over); dozer (engine h.p. 65 or over); Fordson tractor or like quipment with hoe or loader equipment or ditcher; scraper type equipment; loader op. of hi-lift (engine h.p. 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump - boom type

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POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 5, 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with a Frame; roller, all types; outside elevator or building type of personnel hoist; concrete buster or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when & if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator-building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. & under (1 or 2); welding machine (1 or 2); pump (1 or 2); greaser; tilt top trailer op.; fuelman; truck crane oiler driver or crane oiler; conveyor op.-single-continuous belt bulk handling; asphalt lay machine back end man.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii).

SUPERSEDEAS DECISION

STATE: MARYLAND

COUNTIES: ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND, AND FOR HEAVY CONSTRUCTION PROJECTS IN HARFORD & HOWARD COUNTIES, MARYLAND

DECISION NO.: MD79-3031

DATE: DATE OF PUBLICATION

Supersedes Decision No. MD78-3020 dated April 14,1978, in 42 FR 16045

DESCRIPTION OF WORK: Building Construction (does not include single family houses and apartments up to and including 4-stories) and Heavy Construction Projects (does not include sewer and water lines)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.95	.85	.95		.02
BOILERMAKERS	12.775	1.175	1.00		.04
BRICKLAYERS	11.18	.70	.50		.07
CARPENTERS, SOFT FLOOR LAYERS, MILLWRIGHTS & PILEDRIVERS:					
Zone 1 - Anne Arundel County (the city of Annapolis and that portion of the county south and east of the following line: beginning at Rte. 3 and the Patuxent River, north of Rte. 3 to the junction of Benfield Rd., then right on Benfield Rd. to the junction of Jumpers Hole Rd. left on Jumpers Hole Rd. to the junction of Ritchie Hwy., left on Ritchie Hwy. to the junction of Rte. 100, right on Rte. 100 to Rte. 177 and continuing in an easterly direction on Rte. 177 to Gibson Island):					
Carpenters & soft floor layers	10.45	.80	.60		.05
Millwrights	10.94	.80	.60		.05
Piledriver	10.68	.80	.60		.05
Zone 2 - Anne Arundel (remainder of county), Baltimore, Baltimore City, Harford and Howard Counties:					
Carpenters, soft floor layers, resilient floor layers and pile drivers	9.80	.75	.69		.07
Millwrights	10.10	.75	.69		.07

DECISION NO. MD79-3031	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS	10.00	.60	.55		.04
DIVERS AND TENDERS:					
Zone 1 - Anne Arundel County (the city of Annapolis and that portion of the county south and east of the following line: beginning at Rte. 3 and the Patuxent River, north of Rte. 3 to the junction of Benfield Rd., then right on Benfield Rd. to the junction of Jumpers Hole Rd. left on Jumpers Hole Rd. to the junction of Ritchie Hwy., left on Ritchie Hwy. to the junction of Rte. 100, right on Rte. 100 to Rte. 177 and continuing in an easterly direction on Rte. 177 to Gibson Island):					
Divers (Depth rate: From 60' to 100' the diver shall receive an extra 50¢ per foot per day)	20.365	.80	.60		
Diver tenders	11.803	.80	.60		
ELECTRICIANS:					
Zone 1 - From Baltimore City Hall to 25 miles	11.30	.80	3%+1.20		1/2%
Zone 2 - Over 25 miles to 45 miles from Baltimore City Hall	11.55	.80	3%+1.20		1/2%
Zone 3 - Over 45 miles from Baltimore City Hall	11.80	.80	3%+1.20		1/2%
ELEVATOR CONSTRUCTORS	10.71	.745	.35	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.50	.745	.35	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY)	5.355				

DECISION NO. MD79-3031	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	9.97	.80	1.53		.06
IRONWORKERS:					
Ironworkers, finishers, rodmen; pre-cast & pre-stress erectors	10.70	.90	1.95		.06
Shooters	10.95	.90	1.95		.06
Fence erectors	10.35	.90	1.95		.06
LABORERS, BUILDING:					
Laborers	7.85	.35	.55		.075
Burners (demolition)	8.35	.35	.55		.075
Hod Carriers, gunnite nozzle & gun operator	8.25	.35	.55		.075
Plasterers' Laborers	8.00	.35	.55		.075
Power tool operators	7.95	.35	.55		.075
Pipelayers (concrete & clay)	8.05	.35	.55		.075
Wagon drill operator, Jackhammer operator-80# and over, and Barco Tampers	8.10	.35	.55		.075
Mason tenders	8.20	.35	.55		.075
Scaffold builders	8.40	.35	.55		.075
LABORERS, HEAVY:					
Laborers	7.05	.35	.55		.075
Power tool operators	7.15	.35	.55		.075
Pipelayers, wagon drill operators, air track driller, burners (demolition)	7.55	.35	.55		.075
Jackhammer Operator - 80 lbs. and over	7.30	.35	.55		.075
LATHERS	11.34		.35	c	.01
LEAD BURNERS	12.60	.65			.01
MARBLE SETTERS	11.18	.70	.50		.07
MARBLE, TILE & TERRAZZO WORKERS' FINISHERS	7.275	.50	.20		
LINE CONSTRUCTION:					
Zone 1 - From Baltimore City Hall to 25 miles:					
Lineman, cable splicers, digging & equipment operator	12.70	.60	3%		
Winch trucks & trucks with pole or steel handling	8.51	.60	.3%		

DECISION NO. MD79-3031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D)					
Zone 1 - Trucks without winch	7.94	.60	3%		
Groundmen	8.00	.60	3%		
Zone 2 - From 25 miles to 45 miles from Baltimore City Hall:					
Linemen, cable splicers, digging and equipment operator	12.95	.60	3%		
Winch trucks & trucks with pole or steel handling	8.76	.60	3%		
Truck without winch	8.19	.60	3%		
Groundmen	8.25	.60	3%		
Zone 3 - Over 45 miles from Baltimore City Hall:					
Linemen, cable splicers, digging and equipment operator	13.20	.60	3%		
Winch trucks & truck with pole or steel handling	9.01	.60	3%		
Truck without winch	8.44	.60	3%		
Groundmen	8.50	.60	3%		
PAINTERS:					
Brush and roller	9.35	1.00	.55		.07
Spackling, taping & wall covering	9.50	1.00	.55		.07
Spray painting (except steel)	9.60	1.00	.55		.07
Steel painters; any painting using swing stages & boatswain chair; sand & waterblasting; steam cleaning; all epoxy spray (steel only)	9.85	1.00	.55		.07
PLASTERERS	9.95	.60	.40	e	
PLUMBERS	11.19	.87	.99		.16
ROOFERS:					
Roofers, damp & waterproof workers	9.00	.60	.45		
Slate, tile, asbestos & asphalt shingle	9.45	.60	.45		
Precast slab & woodblock layer	10.00	.60	.45		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	10.12	.75	.70		.07
SPRINKLER FITTERS:					
Baltimore City including a 10-mile radius beyond the City limits	12.50	.75	1.00		.05
Harford & Howard Counties and the remainder of Anne Arundel and Baltimore Counties	12.96	.75	1.05		.08
STEAMFITTERS	12.29	.83	.92		.15
STONE MASONS	11.18	.70	.50		.07
TILE & TERRAZZO WORKERS	9.51	.70	.50		.04
TRUCK DRIVERS:					
Goose-necks, drop frame trailers	9.40	1.05	.75	c+d	
All "A" Frames, winch trucks, fork lifts & trailers	9.20	1.05	.75	c+d	
Flat beds & pick ups	8.20	1.05	.75	c+d	
Euclid wagons & dumpsters	8.25	1.05	.75	c+d	
Dump trucks	7.94	1.05	.75	c+d	
TRUCK DRIVERS (Excavation):					
Dump truck	8.64	1.05	.75	c+d	
Euclid wagons & dumpsters	8.95	1.05	.75	c+d	
Drop Frame, gooseneck & trailers	8.84	1.05	.75	c+d	
Pick-ups	8.43	1.05	.75	c+d	
POWER EQUIPMENT OPERATORS Building and Heavy Construction					
Group 1	11.34	.95	1.00	a	.13
Group 2	10.87	.95	1.00	a	.13
Group 3	10.32	.95	1.00	a	.13
Group 4	9.78	.95	1.00	a	.13
Group 5	8.71	.95	1.00	a	.13
Group 6					
A	11.49	.95	1.00	a	.13
B	11.69	.95	1.00	a	.13
C	11.89	.95	1.00	a	.13
D	12.09	.95	1.00	a	.13
E	12.34	.95	1.00	a	.13

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POWER EQUIPMENT OPERATORS - BUILDING AND HEAVY CONSTRUCTION

Group 1 - Operators handling or setting steel, stone prestressed concrete or machinery. Tower Cranes.

Group 2 - Backfiller, backhoe, batching plants, boat captain, cableway, case type hoe (with a front end bucket over 1¼ yds.), concrete mixing plants, concrete paver, derrick boat, double concrete pump, dragline, Eimco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradall, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power shovel, repair mechanic, shield, standard gauge locomotive, trenching machine, tunnel mucking machine, twin engine scraper, welder, whitley rig.

Group 3 - Asphalt spreader, bulldozer, bull float, crane type backhoe (with a front end bucket 1¼ yds. and under), concrete mixer (with skip), concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), Hi-lift fork lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller, screeding machine, stone crusher, stone spreader, sub-grader, tractor with attachments (2 or more provided both attachments are being used.)

GROUP 4 - Caterpillar type tractor, compressors, elevator operator, firemen, fuel truck, grease truck, grout pump, light plant, mighty midget with compressor, single conveyor, space heaters, welding machines, well-drill, well point system

GROUP 5 - Deck hands, oilers (all types)

Group 6 - Long boom cranes, including jibs and on piledriver machines with leads: when working with piledrivermen or ironworker

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POWER EQUIPMENT OPERATORS - BUILDING AND HEAVY CONSTRUCTION (CONT'D)

Group 6A - 130' to 169'

Group 6B - 170' to 209'

Group 6C - 210' to 249'

Group 6D - 250' to 299'

Group 6E - 300' and over

Welders - receive rates prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. Employee with 1 year of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided the employee has worked 125 days in the previous contract year.
d. Holidays: A through F plus the employee's birthday; the day after Thanksgiving Day and Christmas Eve (provided the employee has worked one day and has been available for work during holiday week).
e. Employee working Christmas Eve shall work 4 hours and receive 8 hours pay.

SUPERSEDEAS DECISION

STATE: North Carolina
COUNTIES: See below*
DECISION NUMBER: NC79-1154
DATE: Date of Publication
Supersedes Decision No. NC77-1076 dated June 10, 1977 in 42 FR 30079
DESCRIPTION OF WORK: Residential Construction Projects (consisting of single family homes and apartments up to and including 4 stories).

*Alexander, Alleghany, Ashe, Caldwell, Watauga, & Wilkes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ACCOUSTICAL SPRAY APPLICATOR	$4.50				
BRICKLAYERS	4.50				
CARPENTERS	4.50				
CARPET MECHANICS	5.65				
CEMENT MASONS	4.82				
DRYWALL HANGERS	4.50				
DRYWALL FINISHERS	5.00				
ELECTRICIANS	5.04				
INSULATION INSTALLERS	4.00				
IRONWORKERS:					
Structural & Ornamental	4.30				
Reinforcing	4.17				
LABORERS:					
Unskilled	3.42				
Mason tenders	4.00				
Pipelayers	4.38				
PAINTERS, Brush	5.00				
PLUMBERS & PIPEFITTERS	5.17				
ROOFERS	4.50				
SHEET METAL WORKERS	4.58				
SOFT FLOOR LAYERS	5.74				
TRUCK DRIVERS	3.47				
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	3.60				
Backhoes	6.00				
Bulldozers	4.44				
Graders	4.50				
Loaders	4.50				
Pans - Scrapers	3.50				
Paver operators	4.00				
Rollers	3.75				
Tractors	3.75				

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Federal Register

Friday
November 30, 1979

Part III

Environmental Protection Agency

Protection of Visibility; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CR Part 51

[FRL 1355-8, Docket No. A-79-40]

Protection of Visibility

AGENCY: U.S. Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Section 169A of the Clean Air Act requires EPA to promulgate regulations to assure reasonable progress toward the congressionally declared goal of "the prevention of any future and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Visibility protection is also provided for in Sections 165(d) and 165(e) through Prevention of Significant Deterioration (PSD) new source review procedures. Section 165(d) specifically requires the protection of "the air quality related values (including visibility) of any such lands within a class I area." Section 165(e) requires "an analysis of the * * * visibility at the site of the proposed major emitting facility." This will ensure that the impact of all new sources on visibility will become a part of the total review process.

This notice provides background information on the key components of the regulatory program being developed. In addition, it outlines some of the tentative positions developed by the Agency staff. While these positions do not constitute Ageny policy decisions, they are included to help focus discussion and thereby enhance public participation in this rulemaking. EPA solicits comments on all aspects of this program. The Agency also intends to hold two public workshops to enhance public participation.

DATES: Comments must be received no later than December 31, 1979.

ADDRESS: All comments should be submitted (in duplicate, if possible) to: Central Docket Section [A-130], U.S. Environmental Protection Agency, Attn: Docket No. A-79-40, 401 M Street SW., Washington, D.C. 20460.

Docket No. A-79-40, containing material relevant to this action, is located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Johnnie L. Pearson, Environmental Protection Agency (MD-15), Research Triangle Park, North Carolina 27711. Telephone (919) 541-5497.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Statute.* Section 169A of the Clean Air Act requires visibility protection for mandatory class I Federal areas where it has been determined that visibility is an important value. "Mandatory class I Federal areas" are all international parks and certain national parks and wilderness areas as described in Section 162(a) of the Clean Air Act. There are 158 mandatory class I areas. To work toward meeting the national visibility goal, Section 169A requires:

The Department of Interior in consultation with other Federal Land Managers to review all mandatory class I Federal areas and identify those areas where visibility is an important value of the area.

EPA, after consulting with the Department of Interior, to promulgate a list of mandatory class I areas in which visibility is an important value. EPA on February 12, 1979, (44 FR 8909) proposed to designate 156 mandatory class I areas as having visibility as an important value and therefore in need of protection. EPA has reviewed the comments received and is promulgating that list elsewhere in today's Federal Register.

EPA to prepare a report to Congress on methods for achieving progress toward the visibility goal. The report must include methods to determine visibility impairment, modeling techniques, or methods for preventing and remedying man-made air pollution and resulting visibility impairment, and a discussion of visibility related pollutants and sources. A copy of this document is in the docket.

EPA to promulgate regulations which will (1) provide guidelines to States for including visibility protection in State Implementation Plans (SIPs) and (2) require SIPs to include emission limits, schedules for compliance, and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal.

EPA to approve/disapprove SIP revisions submitted in response to the promulgated requirements.

EPA to promulgate regulations for those States which submit inadequate regulations or fail to submit regulations in response to EPA's requirements.

In addition to the above requirements specified in Section 169A of the Act, Congress also included visibility protection requirements in the provisions for prevention of significant deterioration (PSD) in Section 165(d) and 165(e). Section 165(d)(2)(B) provides:

> The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

Section 165(e) states that regulations "shall require an analysis of the * * * visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility." EPA has promulgated requirements consistent with the Clean Air Act for PSD. The visibility program will provide further clarification of requirements for analysis of visibility protection.

B. *An Introduction to Visibility and Visibility Impairment.* Visibility impairment is caused by the scattering and absorption of light by suspended particles and gases. These light scattering and light absorbing pollutants reduce the amount of light received from viewed objects and scatter ambient or "air" light into the line of sight. This scattered air light may be perceived as haze and/or discoloration. When particles and light absorbing gases are confined to an elevated haze layer or coherent plume, the main visual impact will be a discoloration of the sky or a white, gray, or brown plume. The preceived impact depends on a number of factors such as sun angle and condition of background sky.

Primary particulates, e.g., fly ash, and secondary aerosols formed by chemical reactions of the atmosphere with precursor gases, e.g., SO_2, are the major contributors of fine particles which most effectively scatter light. Additionally, gaseous pollutants absorb light which can result in a distinguishable cloud which appears red or brownish.

The major point sources which contribute to man-made visibility impairment are utilities, industrial fuel combustion, smelters and kraft pulp mills. Additionally, area sources, urban plumes, and prescribed burning (managed agricultural/forestry burning), contribute to visibility impairment. These and other causes and contributors to the degradation of visibility are discussed in more detail in the Report to Congress referenced below.

C. *Solicitation of Comments.* The primary background documents developed to date include "Protecting Visibility: An EPA Report to Congress

(Preprint October 1979, EPA–450/5–79–008) and "The Development of Mathematical Models for the Prediction of Anthropogenic Visibility Impairment" (EPA–450/3–78–110 a,b,c). The Report to Congress is available through Mr. Joseph Padgett, Director, Strategies and Air Standards Division, U.S. Environmental Protection Agency (MD–12), Research Triangle Park, N.C. 27711. Telephone (919) 541–5204. The Development of Mathematical Models is available through the U.S. Environmental Protection Agency Library (MD–35). Research Triangle Park, N.C. 27711. Telephone (919) 541–2777. These documents are also available for public inspection and review during normal business hours at the Central Docket Section (No. A–79–40), Room 2903B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. EPA urges interested persons to review these two documents which discuss the regulatory development program, the scientific and technical issues, and other issues related to regulatory development in more detail than is possible in this Notice. Additional efforts pertaining to visibility have been initiated by several organizations including the Council on Environmental Quality, Department of Energy, and the Federal Land Managers. These studies in conjunction with other proposed efforts will be utilized in formulating visibility regulations. They will be placed in the public docket as they are finalized and reports summarizing these efforts will also be made available.

This Notice solicits comments on Sections 169A, 165(d) and (e) visibility requirements, and specifically directs commenters to the program, policy, and technical issues identified in the balance of this Notice. It is important to note that many of the following issues are so interrelated as to prevent total segregation into individual issues. Commenters should therefore consider all aspects of the program when preparing responses to this Advanced Notice. The Agency desires to ensure that the public is as fully informed as possible on the issues related to visibility protection. In this regard the Agency intends to hold two public workshops, tentatively in Denver, Colorado and Seattle, Washington, to present information and issues relevant to visibility protection and regulatory development. The Agency will formally announce in the Federal Register the location, times, and format for these workshops as soon as all arrangements have been finalized.

II. Statement of Key Program, Policy, and Technical Components of Visibility Protection

A. *Intergovernmental Coordination.* The principal purpose of class I visibility impairment analyses and promulgation of visibility regulations is to assist the States and the Federal Land Managers in implementing the requirements set forth by the Clean Air Act. Therefore, while primary responsibility for implementation of the visibility program lies with the States and Federal Land Managers, EPA has the principal responsibility for overall program development and coordination.

Both Sections 169A and 165(d) reflect the necessity of cooperation between Federal agencies and States:

(1) Section 169A requires that "the Administrator shall, after consultation with the Secretary of Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value." This action is published elsewhere in todays Federal Register.

(2) Section 169A requires EPA to promulgate regulations with will provide guidelines to the States for including visibility protection in SIPs and also requires SIPs to include "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal."

(3) Section 165(d) requires that EPA, along with the affected States, inform the Federal Land Managers of proposals of new major sources whose emissions may affect a class I area, and consult with the Federal Land Managers on the potential adverse impact such emissions may have on the air quality related values (including visibility) of the area.

(4) Section 169A permits exemptions from the best available retrofit requirements for sources that do not or will not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in mandatory class I areas. Additionally, Section 165(d) permits the President to approve a State variance from applicable class I increments where there is disagreement between the State and the Federal Land Manager regarding the impact of a source on visibility and other air quality related values for a class I area. Implementation of these provisions will require the cooperation of EPA, Federal Land Managers and the States. Important issues involving cooperation between Federal agencies and States are discussed below regarding identifying traditional vistas and establishing visibility objectives.

B. *Visibility Objectives.* Different regions of the country have different types, causes, and degrees of visibility impairment. Identification of visibility objectives that reflect the complex nature of visibility impairment may be helpful. Visibility objectives would represent the visibility characteristics and values which are to be restored and protected, or, in some cases, tolerated on an infrequent basis. Although ultimate visibility objectives must be consistent with the national goal, interim or preliminary objectives, reflecting an understanding of the complexities of visibility impairment, may be useful in making reasonable progress toward the goal. Several qualitative examples of interim visibility objectives include:

(1) National or regional objectives regarding the seasonality, frequency, and intensity of prescribed burning activities.

(2) A national objective with respect to visible, coherent plumes.

(3) Area-specific objectives with respect to vistas extending outside class I areas.

(4) National or regional objectives concerning allowable impairment from new sources.

(5) Regional or area-specific objectives calling for maintenance of current visibility or improvement to *specific levels.*

Providing a mechanism for the development and articulation of visibility objectives is a key problem. The process must include the interaction of affected States and Federal Land Managers, and opportunity for direct public comment. In developing procedures for interim visibility objectives, EPA could call for formal procedures in guidelines for implementing Section 169A or allow individual States and Federal Land Managers to develop ad hoc mechanisms.

These visibility objectives may also be used to establish criteria by which reasonable progress may be evaluated. These criteria may be developed on a regional or area-specific basis depending upon current air quality conditions and the area impacted by sources which contribute to the visibility impairment.

C. *Program Surveillance.* The overall visibility surveillance program will involve not only development of monitoring networks to measure changes in visibility but the development of methodologies for reviewing and assessing progress toward attaining the national goal. Some methods for coordination and

simplification of program surveillance and surveillance responsibilities are:

(1) Having Federal Land Managers take an active role in visibility SIP revisions review, and monitoring and surveillance responsibilities.

(2) Establishing a national visibility surveillance network designed to reduce duplication of data and to facilitate a more efficient analysis of data. States, Federal Land Managers, and possibly sources under the requirements for PSD monitoring could be responsible for collection of data.

(3) Having EPA assemble and maintain a national surveillance system with input on procedures and assessments from Federal Land Managers and States.

The collection of data concerning present visibility conditions through monitoring and surveillance networks is essential to ongoing visibility research and program development. Issues, such as the ability to determine natural contributions to visibility impairment versus man-made contributions, determination of baseline, and determination of the degree of impairment caused by a source, hinge on the establishment of a precise monitoring network.

D. *Definition of Impairment.* Visibility impairment as defined in Section 169A(g)(6) "shall include reductions in visual range and atmospheric discoloration." Section 169A also refers to the "significance" of the impairment from existing sources and Section 165(d) refers to whether a new source visibility impact is "adverse." The requirement for reasonable progress toward the national goal applies to impairment from man-made (as opposed to natural) air pollution. To implement the Act, interpretations of the phrases "impairment," "significant impairment," and "adverse impact" must be established.

At least three definitions of "impairment" have been suggested to the Agency: (1) The smallest measurable change in visibility which is detectable by instrument but not necessarily perceptible to human observers; (2) Impairment which is perceptible to humans; and (3) A visually perceptible impairment which is considered either significant or adverse. EPA's current view is that man-made visibility impairment, in context of the national visibility goal, is any visually perceptible change in visibility (visual range, contrast, atmospheric color, or other index) from that which would have existed under natural conditions (Level 2).

Regarding the terms "significant impairment" and "adverse impact," it is EPA's view that an effect on visibility must at least be visually perceptible by human observers to be regarded as either significant or adverse. Should additional judgments with respect to the level of impairment that is considered significant or adverse be made? One of the criteria which could be considered in defining "significant" and "adverse" visibility effects would involve the temporal extent (duration, frequency of occurrence, and time of occurrence) of the effects. Under what circumstances are short-term or infrequent phenomena, or both, likely to be of less concern? Should decisions on what effects constitute significant impairment or adverse impacts be made on a case-by-case basis using general criteria or by some other mechanism? What should be the roles of the States, Federal Land Managers, and EPA in each type of decision?

Effects amounting to impairment, significant impairment, or adverse impact appear to be identifiable only by the use of a conceptual tool known as "baseline." EPA must resolve which of the two following definitions of baseline is more appropriate: (1) The level of man-made pollutants present at a given time in an area or, (2) approximations of natural levels, i.e., levels excluding any anthropogenic pollution impact. Is it appropriate to use different definitions of baseline for different types of decisions? Both alternatives have certain limitations. A drawback when using either definition of baseline is that the capabilities of available visibility assessment tools and the variability of natural impacts will probably limit the precision of calculation of either current or natural visibility conditions. Both definitions would require extensive monitoring to obtain data necessary to establish a baseline. EPA has tentatively defined baseline as an approximation of natural levels. This definition of baseline as an approximation of natural conditions could be used in defining the national goal and in determining whether reasonable progress is being made. On the other hand, assessments of new source impacts and existing source reductions could be based upon current levels of impairment. Comments are specifically solicited on all possible definitions of baseline and the possible impacts of each definition.

E. *Out of Area Vistas.* Section 169A clearly requires protection of vistas included within the boundaries of the class I area. However, the question remains whether vistas located outside mandatory class I area boundaries, that can be viewed from within the area, are an integral part of the visibility value of the area and should therefore be covered by the national goal. EPA's preliminary position is that they are. However, it does not appear that Congress intended to protect urban and other vistas not integral to the viewing experience which can be seen from national parks and wildernesses (A likely example of a non-integral vista is the view of Denver which can be seen from places within the Rocky Mountain National Park). It becomes important therefore to develop criteria for determining which traditional vistas extending beyond class I area boundaries constitute a vital part of the total class I area experience. Determination of which traditional vistas will be eligible for visibility protection will most likely be conducted using procedures developed by the Federal Land Managers. What roles should the States and EPA have in these determinations?

F. *Modeling.* Although empirical approaches can be used to identify existing man-made air pollution, predictive models are necessary to evaluate the effects of alternative controls on existing sources and the potential impacts of new sources. Unlike traditional air quality modeling, visibility models must predict integrated plume effects, not individual point concentrations at ground level. Important problems in visibility models include:

(1) Predictions of atmospheric dispersion characteristics become less reliable as distance from the source increases. Mountainous and hilly terrain, common near mandatory class I areas, is a particularly difficult problem.

(2) The chemical transformation and removal processes for oxides of sulfur and nitrogen have been estimated under limited field conditions but are difficult to predict under varying environmental conditions.

(3) The models are sensitive to baseline visibility conditions. Until monitoring programs provide data for class I areas, baseline conditions must be represented by estimates based upon limited data.

(4) The models are subject to the uncertainties in current understanding of human visual perception and the optical characteristics of modeled air pollutants.

(5) Modeling of regional scale transport of pollutants is significantly limited by an incomplete understanding of large-scale meteorological processes, uncertainties in boundary conditions such as conditions at ground level and the top mixing layer, and lack of adequate inventories of natural and man-made pollution sources.

(6) Visibility models have generally not been validated although major experimental efforts are underway to confirm theoretical predictions.

Despite these uncertainties, it is EPA's position that visibility models can and should, within their limitations, be used to evaluate source impacts. Modeling of certain source categories such as multistate and long-range transport are difficult at this time but modeling of major point sources and the control of obvious sources of plume blight are technically feasible. At the present time, modeling is still the best method for evaluation and determining the effect of control of visibility degrading air pollution.

Congress directed EPA to establish modeling requirements in Section 165(e). In Section 320, Congress directed EPA to hold a conference on modeling with paritcular attention to be directed to modeling impacts under the prevention of significant deterioration and the visibility programs. This conference was held on December 14 and 15, 1977 in Washington, D.C., and the transcript may be inspected at Central Docket Section (A–130), Docket No. A–79–40, Room 2903B, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

G. *Plume Blight and Regional Haze.* For discussion purposes, it is useful to categorize visibility impairment according to visual effect. The two general types of visibility impairment are plume blight and regional haze. Because they also occur on different scales of distance, it may be necessary to use different control approaches for each category.

Plume blight is defined as an identifiable, coherent plume which is observable against a background sky or other object. In many cases, the plume may be visually traced back to a single source.

Haze is a widespread reduction in visibility resulting from a polluted air mass, and frequently occurs on a scale of hundreds of miles and lingers for long periods of time. The haze may move over long distances and cause visibility impairment in areas which have few of no man-made emission sources, including mandatory class I areas. Many sources, including natural ones, from many areas contribute to the haze.

Compared to haze, plume blight is usually short-lived and local. It may be reasonable to consider a control approach for plume blight based on emission limitations for a single source, although control of regional haze may require regional emission limitations.

The recognition of the type of visibility impact a specific source or group of sources will have is extremely important in the development of the visibility program. The program will need to provide sufficient flexibility to handle such technical problems as control of oxides of nitrogen, urban plumes, and regional haze within the confines of the Congressional mandate. Comment is therefore solicited on means by which such technical issues may be incorporated into the overall program.

H. *Phased Program.* EPA currently intends to implement a phased approach to visibility protection. EPA believes that regulations and guidelines, while encompassing the full range of Clean Air Act requirements, should to the extent possible permit States to focus initially on the most clearly defined cases of existing impairment and on strategies to prevent future impairment, and also allow for evolution of broader control strategies as scientific understanding of urban plumes, regional haze, control of non-major sources contributing to visibility impairment and other difficult matters improves.

I. *Long-Term Strategies.* In the initial phases of visibility protection, application of Best Available Retrofit Technology (BART) is likely to be limited to cases of plume blight or single source haze. The BART mechanism does not appear to apply to other important categories of visibility impairment such as prescribed burning, emissions from older sources, and urban plumes.

On the other hand, evaluation of new source impacts must focus on major stationary sources, particularly power plants. In addition, current PSD. procedures for assessing new source impacts on visibility do not totally assess increases in emissions associated with population growth, such as increased urbanization, automotive emissions and space heating. Neither do they adequately control visibility impairment resulting from agricultural activities and highway construction.

Long-term strategies, because of limitations in the applicability of BART and PSD, will be central to making progress toward the national visibility goal. These strategies should provide for integration of visibility objectives into ongoing air management efforts to account for sources not adequately covered by other mechanisms, and explore innovative approaches for making cost effective progress toward visibility protection. Potential long-term control approaches which may prove desirable in the 1980's include an accelerated reduction in regional haze occurring in the Eastern United States, maintaining regional visibility levels in the Southwest and reducing impacts of forest and other burning in the Pacific Northwest. Innovative regulatory strategies being considered are discussed in the Report to Congress referenced previously.

Comments are solicited on all aspects of the program, especially those discussed in this notice. Comments will be available for public inspection and copying at the Central Docket Section (No. A–79–40), Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

This Advance Notice of Proposed Rulemaking is issued under the authority granted in Sections 110, 165, 169A, and 301 of the Clean Air Act.

Dated: November 21, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-36718 Filed 11-29-79; 8:45 am]

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Friday
November 30, 1979

Part IV

Environmental Protection Agency

Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL1349-4; Docket No. OAQPS-79-09]

National Visibility Goal for Federal Class I Areas; Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final action.

SUMMARY: Section 169A(a)(2) of the Clean Air Act requires EPA to promulgate, after consultation with the Secretary of the Department of the Interior (DOI), a list of mandatory class I Federal areas where visibility is an important value. On February 12, 1979 (44 FR 8909) the Environmental Protection Agency (EPA) proposed, after consultation with DOI, a list of mandatory class I Federal areas where visibility is an important value. EPA is today promulgating the proposed list without a change.

EFFECTIVE DATE: November 21, 1979.

ADDRESSES: This promulgation and background information relevant to it are available for public inspection during normal business hours at the EPA Central Docket Section (Docket No. OAQPS-79-09) Room 2903B, 401 M Street S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Pearson, Standards Implementation Branch, Control Programs Development Division, Office of Air Quality Planning and Standards, Environmental Protection Agency (MD-15), Research Triangle Park, North Carolina 27711. Phone: (919) 541-5497.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1977 added Section 169A to the Clean Air Act. In this Section, Congress established, as a national goal, "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Mandatory class I Federal areas are composed of all international parks, all national wilderness areas and memorial parks which exceed 5,000 acres in size and all national parks which exceed 6,000 acres in size. These areas must have been in existence on the date of enactment of the 1977 amendments and may not be redesignated. There are 158 such areas.

An initial step in developing programs which make reasonable progress toward meeting this national goal is set out in Section 169A(a)(2), which requires that DOI, in consultation with other Federal Land Managers, review all mandatory class I Federal areas and identify those areas where visibility is an important value. EPA, after consulting with DOI, must promulgate a list of mandatory class I Federal areas in which it determines visibility is an important value.

On October 14, 1977 (42 FR 55280) DOI published notice seeking public comment on its preliminary determination that 153 of the 158 mandatory class I Federal areas possessed visibility as an important value. These 153 areas were identified by a task force, of which EPA was a consulting member, that created and applied the following criteria:

1. Does the legislation for the area indicate that scenic value was an important consideration for establishing the area? or,

Is the area possessed of scenic values that are important to public enjoyment?

2. Are scenic values of the area primarily in the form of panoramic background, intermediate or foreground views?

3. Do natural sources of visibility impairment seriously affect the ability of the public to appreciate visibility as an important value?

4. For those areas in which natural sources of visibility impairment seriously affect public appreciation of scenic values, is the magnitude of scenic value sufficient to warrant protection from man-caused sources?

The process by which the criteria was applied to each Federal mandatory class I area involved (1) the participation of the individual park superintendents and forest rangers who surveyed each area, and (2) a review of the park superintendents' and forest rangers' recommendations by the regional staffs responsible for the class I areas in their region and by the Washington, D.C. staff who consulted with the regional staffs. Through this consultation process, each of the 158 mandatory class I Federal areas was evaluated and tested against the criteria.

Review and analysis of public comments and DOI's preliminary findings produced one change in the criteria used to identify whether visibility is an important value. The Character of the Scenic Values (Step 3) used in the logic network for evaluating class I areas was changed so that only those areas which possess no sweeping view of background features, panoramas, or views of middleground or background features would fail to be identified to possess visibility as an important value in this step. Under the preliminary criteria, an area was identified as not possessing visibility as an important value if views were primarily, or mostly, of foreground features less than one mile distant; although one of more background or middleground view or panorama was present. The one-mile cutoff is used because it is the shortest distance at which a broad perception of an area is possible, i.e., it allows an individual to observe overall patterns, shapes, and textures of the area. The one-mile cutoff is consistent with definitions of foreground, middleground, and background presented in the USDA, Forest Service Landscape Management Book, Volume I.

The application of the revised criteria identified three areas which possess visibility as an important value in addition to the 153 areas so identified in the preliminary findings. The three additional areas are: Mammoth Cave National Park, Kentucky; Moosehorn Wilderness, Maine; and Medicine Lake Wilderness, Montana. DOI published this final list of 156 areas on February 24, 1978 (43 FR 7721).

On February 12, 1979, EPA proposed to list these same 156 areas.

EPA Review

From the earliest stages of development, EPA followed DOI's progress in developing and applying the criteria by which the list of class I visibility protection areas was produced. EPA also reviewed the criteria and the comments obtained from public meetings conducted throughout the country. Finally, the workbooks, containing narratives provided by Federal Land Managers, were reviewed with particular attention paid to the logic behind the application of criteria to specific areas and the extensive public comment received. It is EPA's judgment that the Federal class I areas meeting visibility protection requirements as determined by DOI are correct. Therefore, EPA is promulgating the proposed list without any changes in designations. It should be noted, however, that the February 12, 1979 proposal of this action (44 FR 8909) contained an error. Although Minarets Wilderness in California was evaluated as having visibility as an important value, it was inadvertently omitted from the February 12, 1979 proposal and is properly listed in this promulgation. Since Minarets Wilderness was included on the twice published DOI list

of potentially eligible areas, and since EPA's proposal specifically mentioned the only two negative identifications on that list, EPA does not believe it is necessary to repropose Minarets Wilderness and as such promulgates it at this time.

Significant Comments

Both written comments and comments from the public hearings conducted by DOI were considered in this promulgation. The significant comments are discussed below.

Most speakers at the public hearings disagreed with the premise that a mandatory class I area could exist where visibility is not an important value. The commenters felt the intent of Congress and the national goal was to include all mandatory class I Federal areas in the visibility protection program.

EPA has found that visibility is an important value in 156 out of 158 mandatory class I areas. The two wildernesses which were shown not to have visibility as an important value (Rainbow Lake, Wisconsin and Bradwell Bay, Florida) did not meet the criteria established by DOI. In requiring an analysis of the visibility values in all mandatory class I Federal areas before determining whether visibility protection is necessary, Congress clearly did not necessarily intend that visibility be identified as an important value in all class I areas. See also H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 205 (1977).

The greatest number of comment letters received pertained to the lack of information concerning the impact of listing an area as one where visibility is an important value. The commenters expressed concern over the extent of social and economic impacts on communities surrounding class I areas. Commenters felt that there was a need to evaluate more fully the impact of natural sources, investigate the existing air quality in and around class I areas, and list sources which may potentially be required to install Best Available Retrofit Technology (BART). Specifically, two commenters opposed the designations of Mount Zirkel Wilderness, Rawah Wilderness, and Rocky Mountain National Park as areas where visibility is an important value due to the uncertainty of how the designations would affect the local economy. In addition, groups in the Pacific Northwest protested the reduction or abolition of prescribed burning. One commenter expressed the same concern for forest products industries located near Cohutta Wilderness, Okefenokee Swamp, and Wolf Island Wilderness.

As many commenters recognize, to assess, at the present time, the impact of a future regulatory program under Section 169A is neither possible nor required by law. In Section 169A Congress explicitly called for the listing of areas subject to regulation far in advance of the time when EPA must develop specific regulations for the States which contain guidelines and techniques for making reasonable progress towards the national goal. Congress revealed its sensitivity to the economic impact of any Section 169A regulations by making a cost and energy analysis part of the control technology standard and providing the possibility for exemption to that standard. However, there is no indication that economic impacts be somehow considered—in advance of the regulations themselves—in compiling the Section 169A(a)(2) list. A regulatory analysis is being prepared and these issues, along with those pertaining to prescribed burning, will be dealt with there. This analysis will also address the elements of economic impact set out in Section 317.

The second most mentioned comment was the subjective nature of the evaluation criteria. Two commenters felt key terms such as "important," "scenic value," "public appreciation," and "seriously affect" should have been defined prior to the evaluations. Other comments expressed concern over the dependence of the criteria upon highly variable human judgments, and felt a need to measure objectively the visibility of vistas from their associated viewpoints and incorporate such measurements into the evaluation.

While EPA acknowledges that in some respects the established criteria are subjective, it believes that the subjectiveness of these evaluations is to some extent inherent in the task of assigning "value" to the visibility of an area. Congress required DOI and EPA to accomplish this task in a very short time and did not anticipate that technical problems involved in objective measurements of visibility impairment would be solved before the task could be completed. Since a technical base broad enough to more quantitatively assess the class I area evaluations was not available in the time frame specified by Congress, criteria agreed on by EPA and DOI were developed which established certain priorities and were readily available for use by Federal Land Managers. Sections 165(d) and 169A which, among other things, charge Federal Land Managers with an "affirmative responsibility" to protect visibility values, together show the great weight Congress intended the judgment of Federal Land Managers to have. A technical base for use in future regulations in response to Section 169A is now being established which will quantify and define many of the concerns mentioned above.

One commenter, noting that the effect of the listing will not be precisely known until the Section 169A regulations are proposed, suggested that promulgation of the final list be postponed until after the hearing on the proposed regulations and that the public record be left open during the interim. EPA believes such an approach would be contrary to the Congressional scheme—clearly set out in Section 169A—of promulgating the list of areas in advance, even of the report to Congress containing the technical outline for the eventual visibility regulations.

This does not mean, however, that future public comment and its consideration by EPA as to the specific visibility objectives, values, and important vistas of each area is precluded. EPA recognizes that the future rulemaking under Section 169A will require such additional area-specific analysis. At EPA's request, DOI and the Forest Service have conducted a preliminary analysis of the range of scenic vistas, the nature of visual values and a preliminary estimate of the degree of existing natural and man-made visibility impairment found in each area. EPA expects that the future proposal of visibility regulations will require States and Federal Land Managers to develop such additional area-specific assessments. Both this process, and the proposal itself, will be subject to public comment. To the extent that further comment and additional analysis (or anything else) affects the basis for the list, EPA will propose appropriate revisions.

Several comments asserted that Section 169A is limited to vistas *within* the boundaries of mandatory class I Federal areas, and, accordingly, that the EPA and DOI lists are defective because there is no indication that this alleged "jurisdictional limit" was observed by the persons engaged in the identification process. This observation overlooks DOI's specific discussion of this issue in its February 24, 1978, notice (43 FR 7721, 7724). DOI acknowledged the dispute as to whether vistas without the boundaries of the subject class I areas are protected, but noted that it need not reach the issue because the 156 mandatory class I Federal areas identified were based on views within

the areas seen from within the areas. The two areas not identified possessed no out-of-area vistas which would otherwise qualify them for the list.

EPA also recognizes that there is an issue as to the asserted "jurisdictional limits" of Section 169A. EPA is announcing its preliminary position and soliciting comments on a number of issues in the Advance Notice of Proposed Rulemaking published elsewhere in this Federal Register. For the purposes of this list under Section 169(a)(2), however, EPA has adopted DOI's approach and considered only vistas within an area as observed from a location within the same area. The two mandatory class I Federal areas identified as not possessing visibility as an important value do not have out-of-park vistas which, if considered, would warrant their listing.

Both written comments and those received from public hearings felt criterion 4 (for those areas in which natural sources of visibility impairment seriously affect public appreciation of scenic values, is the magnitude of the scenic value sufficient to warrant protection from man-made causes?) was vague. One written comment suggested the elimination of criterion 4, calling it "inappropriate and illogical." This commenter felt that controlling man-made sources when natural sources of impairment degrade the scenic value such that public enjoyment is diminished is not valid. On the other hand, comments obtained from the public hearings expressed the opinion that man-made pollution can significantly increase visibility impairment even when natural sources are present.

It is important to consider that while natural visibility impairment does exist in some class I areas, it will not only vary in magnitude, but also in duration. The criterion was established to recognize natural sources of impairment which may be of consequence, but it also allows areas with particularly significant scenic values protection from man-made impairment. While the magnitude and duration of natural impairment may be great, the imposition of man-made impairment can significantly reduce the visual appreciation of an area even though it is experiencing some form of natural visibility impairment. Therefore, EPA agrees with the comment that even in areas with substantial natural visibility impairment, important visibility values exist and can be enhanced by control of man-made sources of visibility impairment.

DOI public hearings received numerous comments on the importance of nighttime sky viewing. Many commenters felt this should be included in the criteria to evaluate the importance of visibility to a class I area. EPA acknowledges that nighttime skies are an important part of the wilderness experience, especially to campers and backpackers. EPA feels that this aspect can be considered a visibility value for use in establishing visibility objectives by the Federal Land Managers. It is not considered, however, a major factor in distinguishing between class I areas or evaluating the importance of visibility in one class I area as opposed to another. Indeed, EPA received no written comments suggesting that the two areas excluded from the list promulgated today should have been included because of their nighttime skies.

Several comments received discussed individual wildernesses and reasons why they should or should not be included as areas warranting visibility protection. While most questions are answered in the evaluations of the workbooks, a few will be discussed here.

Although Brigantine Wilderness is used primarily for fishing and birdwatching, the scenic value of the wilderness cannot be separated from the total enjoyment of the park. Even though fishing is the primary attraction, the views one sees are part of the total experience which the public has come to enjoy. Therefore, visibility is an important value contributing to the total enjoyment of this area.

Breton Wilderness was another area for which one commenter urged deletion. In response to the comment that the area is not eligible because of size limitations. EPA has noted that DOI promulgated Breton at 5000 acres and it therefore meets the size requirements set by Congress. The comment also mentioned the poor maintenance of the area. Poor maintenance, however, is irrelevant to whether Congress intended visibility to be protected in the nation's wildlife areas. Breton Wilderness meets the requirements set forth in the criteria, and it is EPA's responsibility to acknowledge this and designate it as an area warranting visibility protection.

In the preliminary evaluation by the National Park Service, Mammoth Cave National Park was excluded from the list of areas having visibility as an important value. Evidence was presented at the public hearings which supported the inclusion of the park in the list. This evidence included legislative history which showed the surface area was a major consideration in the designation of Mammoth Cave as a national park and as a result this park was proposed by DOI and EPA.

Comment was also received concerning the independence of EPA's evaluation of class I areas under consideration for visibility protection. One commenter felt "EPA should not parrot DOI's list" and another commenter did not want EPA to "rubber stamp" DOI's designations. EPA has, however, conducted an independent and thorough evaluation of the workbooks submitted by the Federal Land Managers and has taken into consideration comments supplied at the public hearings held around the country.

Numerous other written and oral comments were received which concerned the upcoming regulations. These commenters did not object to the list, but were more concerned with the potential impact it would cause. These questions will be reviewed and discussed in the regulatory procedure under Sections 165 and 169A of the Clean Air Act.

This promulgation is issued under the authority granted in Sections 101(b)(1), 110, 169A(a)(2), and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

Dated: November 21, 1979.

Douglas M. Costle,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding Subpart D as follows:

Subpart D—Identification of Mandatory Class I Federal Areas Where Visibility is an Important Value

Sec.

81.400 Scope.
81.401 Alabama.
81.402 Alaska.
81.403 Arizona.
81.404 Arkansas.
81.405 California.
81.406 Colorado.
81.407 Florida.
81.408 Georgia.
81.409 Hawaii.
81.410 Idaho.
81.411 Kentucky.
81.412 Louisiana.
81.413 Maine.
81.414 Michigan.
81.415 Minnesota.
81.416 Missouri.
81.417 Montana.
81.418 Nevada.
81.419 New Hampshire.
81.420 New Jersey.
81.421 New Mexico.
81.422 North Carolina.
81.423 North Dakota.
81.424 Oklahoma.
81.425 Oregon.
81.426 South Carolina.

81.427 South Dakota.
81.428 Tennessee.
81.429 Texas.
81.430 Utah.
81.431 Vermont.
81.432 Virgin Islands.
81.433 Virginia.
81.434 Washington.
81.435 West Virginia.
81.436 Wyoming.
81.437 New Brunswick, Canada.

Authority.—Secs. 101(b)(1), 110, 169A(a)(2), and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

Subpart D—Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value

§ 81.400 Scope.

Subpart D, §§ 81.401 through 81.437 lists those mandatory Federal Class I areas, established under the Clean Air Act Amendments of 1977, where the Administrator, in consultation with the Secretary of the Interior, has determined visibility to be an important value. The following listing of areas where visibility is an important value represents an evaluation of all international parks (IP), national wilderness areas (Wild) exceeding 5,000 acres, national memorial parks (NMP) exceeding 5,000 acres, and national parks (NP) exceeding 6,000 acres, in existence on August 7, 1977. Consultation by EPA with the Federal Land Managers involved: the Department of Interior (USDI), National Park Service (NPS), and Fish and Wildlife Service (FWS); and the Department of Agriculture (USDA), Forest Service (FS).

§ 81.401 Alabama.

Area name	Acreage	Public law establishing	Federal land manager
Sipsey Wild	12,646	93-622	USDA-FS

§ 81.402 Alaska.

Area name	Acreage	Public Law establishing	Federal land manager
Bering Sea Wild	41,113	91-622	USDI-FWS
Mount McKinley NP	1,949,493	64-353	USDI-NPS
Simeonof Wild	25,141	94-557	USDI-FWS
Tuxedni Wild	6,402	91-504	USDI-FWS

§ 81.403 Arizona.

Area name	Acreage	Public Law establishing	Federal land Manager
Chiricahua National Monument Wild	9,440	94-567	USDI-NPS
Chiricahua Wild	18,000	88-577	USDA-FS
Galiuro Wild	52,717	88-577	USDA-FS
Grand Canyon NP	1,176,913	65-277	USDI-NPS
Mazatzal Wild	205,137	88-577	USDA-FS
Mount Baldy Wild	6,975	91-504	USDA-FS
Petrified Forest NP	93,493	85-358	USDI-NPS
Pine Mountain Wild	20,061	92-230	USDA-FS
Saguaro Wild	71,400	94-567	USDI-FS
Sierra Ancha Wild	20,850	88-577	USDA-FS
Superstition Wild	124,117	88-577	USDA-FS
Sycamore Canyon Wild	47,757	92-241	USDA-FS

§ 81.404 Arkansas.

Area name	Acreage	Public law establishing	Federal land manager
Caney Creek Wild	14,344	93-622	USDA-FS
Upper Buffalo Wild	9,912	93-622	USDA-FS

81.405. California.

Area name	Acreage	Public Law establishing	Federal land manager
Agua Tibia Wild.	15,934	93-632	USDA-FS.
Caribou Wild	19,080	88-577	USDA-FS.
Cucamonga Wild.	9,022	88-577	USDA-FS.
Desolation Wild.	63,469	91-82	USDA-FS.
Dome Land Wild.	62,206	88-577	USDA-FS.
Emigrant Wild.	104,311	93-632	USDA-FS.
Hoover Wild	47,916	88-577	USDA-FS.
John Muir Wild.	484,673	88-577	USDA-FS.
Joshua Tree Wild.	429,690	94-567	USDI-NPS.
Kaiser Wild	22,500	94-577	USDA-FS.
Kings Canyon NP.	459,994	76-424	USDI-NPS.
Lassen Volcanic NP.	105,800	64-184	USDI-NPS.
Lava Beds Wild.	28,640	92-493	USDI-NPS.
Marble Mountain Wild.	213,743	88-577	USDA-FS.
Minarets Wild	109,484	88-577	USDA-FS.
Mokelumne Wild.	50,400	88-577	USDA-FS.
Pinnacles Wild	12,952	94-567	USDI-NPS.
Point Reyes Wild.	25,370	94-544, 94-567	USDI-NPS.
Redwood NP	27,792	90-545	USDI-NPS.
San Gabriel Wild.	36,137	90-318	USDA-FS.
San Gorgonio Wild.	34,644	88-577	USDA-FS.
San Jacinto Wild.	20,564	88-577	USDA-FS.
San Rafael Wild.	142,722	90-271	USDA-FS.
Sequoia NP	386,642	26 Stat. 478 (51st Cong.).	USDI-NPS.
South Warner Wild.	68,507	88-577	USDA-FS.
Thousand Lakes Wild.	15,695	88-577	USDA-FS.
Ventana Wild	95,152	91-58	USDA-FS.
Yolla-Bolly-Middle-Eel Wild.	109,091	88-577	USDA-FS.
Yosemite NP	759,172	58-49	USDI-NPS.

§ 81.406 Colorado.

Area name	Acreage	Public Law establishing	Federal land manager
Black Canyon of the Gunnison Wild	11,180	94-567	USDI-NPS.
Eagles Nest Wild	133,910	94-352	USDA-FS.
Flat Tops Wild	235,230	94-146	USDA-FS.
Great Sand Dunes Wild	33,450	94-567	USDI-NPS.
La Garita Wild	48,456	88-577	USDA-FS.
Maroon Bells-Snowmass Wild	71,060	88-577	USDA-FS.
Mesa Verde NP	51,488	59-353	USDI-NPS.
Mount Zirkel Wild	72,472	88-577	USDA-FS.
Rawah Wild	26,674	88-577	USDA-FS.
Rocky Mountain NP	263,138	63-238	USDI-NPS.
Weminuche Wild	400,907	93-632	USDA-FS.
West Elk Wild	61,412	88-577	USDA-FS.

§ 81.407 Florida.

Area Name	Acreage	Public Law establishing	Federal land manager
Chassahowitzka Wild	23,360	94-557	USDI-FWS.
Everglades NP	1,397,429	73-267	USDI-NPS.
St. Marks Wild	17,745	93-632	USDI-FWS.

§ 81.408 Georgia.

Area Name	Acreage	Public Law Establishing	Federal Land Manager
Cohotta Wild	33,776	93-622	USDA-FS.
Okefenokee Wild	343,850	93-429	USDI-FWS.
Wolf Island Wild	5,126	93-632	USDI-FWS.

§ 81.409 Hawaii.

Area name	Acreage	Public law establishing	Federal land manager
Haleakala NP	27,208	87-744	USDI-NPS.
Hawaii Volcanoes	217,029	64-171	USDI-NPS.

§ 81.410 Idaho.

Area Name	Acreage	Public Law Establishing	Federal Land Manager
Craters of the Moon Wild.	43,243	91-504	USDI-NPS.
Hells Canyon Wild [a].	83,800	94-199	USDA-FS.
Sawtooth Wild	216,383	92-400	USDA-FS.
Selway-Bitterroot Wild [b].	988,770	88-577	USDA-FS.
Yellowstone NP [c].	31,488	17 Stat. 32 (42nd Cong.).	USDI-NPS.

a Hells Canyon Wilderness, 192,700 acres overall, of which 108,900 acres are in Oregon and 83,800 acres are in Idaho.

b Selway Bitterroot Wilderness, 1,240,700 acres overall, of which 988,700 acres are in Idaho and 251,930 acres are in Montana.

c Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,634 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.411 Kentucky.

Area name	Acreage	Public law establishing	Federal land manager
Mammoth Cave NP	51,303	69-283	USDI-NPS.

§ 81.412 Louisiana.

Area name	Acreage	Public law establishing	Federal land manager
Breton Wild	5,000+	93-632	USDI-FWS.

§ 81.413 Maine.

Area name	Acreage	Public law establishing	Federal land manager
Acadia NP	37,503	65-278	USDI-NPS.
Moosehorn Wild	7,501		USDI-FWS.
(Edmunds Unit)	(2,782)	91-504	
(Baring Unit)	(4,719)	93-632	

§ 81.414 Michigan.

Area name	Acreage	Public law establishing	Federal land manager
Isle Royale NP	542,428	71-835	USDI-NPS.
Seney Wild	25,150	91-504	USDI-FWS.

§ 81.415 Minnesota.

Area name	ACreage	Public law establishing	Federal land manager
Boundary Waters Canoe Area Wild	747,840	99-577	USDA-FS.
Voyageurs NP	114,964	99-261	USDI-NPS.

§ 81.416 Missouri.

Area name	Acreage	Public Law establishing	Federal land manager
Hercules-Glades Wild	12,315	94-557	USDA-FS.
Mingo Wild	8,000	94-557	USDI-FWS.

§ 81.417 Montana.

Area name	Acreage	Public Law establishing	Federal land manager
Anaconda-Pintlar Wild.	157,803	88-577	USDA-FS.
Bob Marshall Wild.	950,000	88-577	USDA-FS.
Cabinet Mountains Wild.	94,272	88-577	USDA-FS.
Gates of the Mtn Wild.	28,562	88-577	USDA-FS.
Glacier NP	1,012,599	61-171	USDI-NPS.
Medicine Lake Wild.	11,366	94-557	USDI-FWS.
Mission Mountain Wild.	73,877	93-632	USDE-FS.
Red Rock Lakes Wild.	32,350	94-557	USDI-FWS.
Scapegoat Wild.	239,295	92-395	USDA-FS.
Selway-Bitterroot Wild [a].	251,930	88-577	USDA-FS.
U. L. Bend Wild.	20,890	94-557	USDI-FWS.
Yellowstone NP [b].	167,624	17 Stat. 32 (42nd Cong.).	USDI-NPS.

a Selway-Bitterroot Wilderness, 1,240,700 acres overall, of which 988,770 acres are in Idaho and 251,930 acres are in Montana.

b Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,624 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.418 Nevada.

Area name	Acreage	Public Law establishing	Federal land manager
Jarbidge Wild	64,667	88-577	USDA-FS.

§ 81.419 New Hampshire.

Area name	Acreage	Public Law establishing	Federal land manager
Great Gulf Wild	5,552	88-577	USDA-FS.
Presidential Range-Dry River Wild	20,000	93-622	USDA-FS.

§ 81.420 New Jersey

Area name	Acreage	Public Law establishing	Federal land manager
Brigantine Wild	6,603	93-632	USDI-FWS.

§ 81.421 New Mexico

Area name	Acreage	Public Law establishing	Federal land manager
Bandelier Wild	23,267	94-567	USDI-NPS.
Bosque del Apache Wild	80,850	93-632	USDI-FWS.
Carlsbad Caverns NP	46,435	71-216	USDI-NPS.
Gila Wild	433,690	88-577	USDA-FS.
Pecos Wild	167,416	88-577	USDA-FS.
Salt Creek Wild	8,500	91-504	USDI-FWS.
San Pedro Parks Wild	41,132	88-577	USDA-FS.
Wheeler Peak Wild	6,027	88-577	USDA-FS.
White Mountain Wild	31,171	88-577	USDA-FS.

§ 81.425 Oregon.

Area name	Acreage	Public law establishing	Federal land manager
Crater Lake NP	160,290	57-121	USDA-NPS.
Diamond Peak Wild	36,637	88-577	USDA-FS.
Eagle Cap Wild	293,476	88-577	USDA-FS.
Gearhart Mountain Wild	18,709	88-577	USDA-FS.
Hells Canyon Wild [a]	108,900	94-199	USDA-FS.
Kalmiopsis Wild	76,900	88-577	USDA-FS.
Mountain Lakes Wild	23,071	88-577	USDA-FS.
Mount Hood Wild	14,160	88-577	USDA-FS.
Mount Jefferson Wild	100,206	90-548	USDA-FS.
Mount Washington Wild	46,116	88-577	USDA-FS.
Strawberry Mountain Wild	33,003	88-577	USDA-FS.
Three Sisters Wild	199,902	88-577	USDA-FS.

a Hells Canyon Wilderness, 192,700 acres overall, of which 108,900 acres are in Oregon, and 83,800 acres are in Idaho.

§ 81.426 South Carolina.

Area name	Acreage	Public law establishing	Federal land manager
Cape Romain Wild	28,000	93-632	USDI-FWS.

§ 81.427 South Dakota.

Area name	Acreage	Public law establishing	Federal land manager
Badlands Wild	64,250	94-567	USDI-NPS.
Wind Cave NP	28,060	57-16	USDI-NPS.

§ 81.428 Tennessee.

Area name	Acreage	Public law establishing	Federal land manager
Great Smoky Mountains NP [a]	241,207	69-268	USDI-NPS.
Joyce Kilmer-Slickrock Wild [b]	3,832	93-622	USDA-NPS.

a Joyce Kilmer-Slickrock Wilderness, 14,033 acres overall, of which 10,201 acres are in North Carolina, and 3,832 acres are in Tennessee.

b Great Smoky Mountains National Park, 514,758 acres overall, of which 273,551 acres are in North Carolina, and 241,207 acres are in Tennessee.

§ 81.429 Texas.

Area name	Acreage	Public law establishing	Federal Land Manager
Big Bend NP	708,118	74-157	USDI-NPS.
Guadalupe Mountains NP	76,292	89-667	USDI-NPS

§ 81.430 Utah.

Area name	Acreage	Public law establishing	Federal land manager
Arches NP	65,098	92-155	USDI-NPS.
Bryce Canyon NP	35,832	68-277	USDI-NPS.
Canyonlands NP	337,570	88-590	USDI-NPS.
Capitol Reef NP	221,896	92-507	USDI-NPS.
Zion NP	142,462	68-83	USDI-NPS.

§ 81.431 Vermont.

Area name	Acreage	Public law establishing	Federal land manager
Lye Brook Wild	12,430	93-622	USDA-FS.

§ 81.432 Virgin Islands.

Area name	Acreage	Public law establishing	Federal land manager
Virgin Islands NP	12,295	84-925	USDI-NPS.

§ 81.433 Virginia.

Area name	Acreage	Public law establishing	Federal land manager
James River Face Wild	8,703	93-622	USDA-FS.
Shenandoah NP	190,535	69-268	USDI-NPS.

§ 81.434 Washington.

Area name	Acreage	Public law establishing	Federal land manager
Alpine Lakes Wild.	303,508	94-357	USDA-FS.
Glacier Peak Wild.	464,258	88-577	USDA-FS.
Goat Rocks Wild.	82,680	88-577	USDA-FS.
Mount Adams Wild.	32,356	88-577	USDA-FS.
Mount Rainer NP.	235,239	30 Stat. 993 (55th Cong.).	USDI-NPS.

Area name	Acreage	Public law establishing	Federal land manager
North Cascades NP.	503,277	90-554	USDI-NPS.
Olympic NP	892,578	75-778	USDI-NPS.
Pasayten Wild.	505,524	90-544	USDA-FS.

§ 81.435 West Virginia.

Area name	Acreage	Public law establishing	Federal land manager
Dolly Sods Wild	10,215	93-622	USDA-FS.
Otter Creek Wild	20,000	93-622	USDA-FS.

§ 81.436 Wyoming.

Area name	Acreage	Public law establishing	Federal land manager
Bridger Wild	392,160	88-577	USDA-FS.
Fitzpatrick Wild.	191,103	94-567	USDA-FS.
Grand Teton NP.	305,504	81-787	USDI-NPS.
North Absaroka Wild.	351,104	88-577	USDA-FS.
Teton Wild	557,311	88-577	USDA-FS.
Washakie Wild	686,584	92-476	USDA-FS.
Yellowstone NP[a]	2,020,625	17 Stat. 32 (42nd Cong.).	USDI-NPS.

a Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,624 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.437 New Brunick, Canada.

Area name	Acreage	Public law establishing	Federal land manager
Roosevelt Campobello International Park	2,721	88-363	Not applicable.

§ 81.422 North Carolina.

Area name	Acreage	Public law establishing	Federal land manager
Great Smoky Mountains NP[a]	273,551	69-268	USDI-NPS.
Joyce Kilmer-Slickrock Wild[b]	10,201	93-622	USDA-FS.
Linville Gorge Wild	7,575	88-577	USDA-FS.
Shining Rock Wild	13,350	88-577	USDA-FS.
Swanguarter Wild	9,000	94-557	USDI-FWS.

a Great Smoky Mountains National Park, 514,758 acres overall, of which 273,551 acres are in North Carolina, and 241,207 acres are in Tennessee.

b Joyce Kilmer-Slickrock Wilderness, 14,033 acres overall, of which 10,201 acres are in North Carolina, and 3,632 acres are in Tennessee.

§ 81.423 North Dakota.

Area Name	Acreage	Public law establishing	Federal land manager
Lostwood Wild	5,557	93-632	USDI-FWS.
Theodore Roosevelt, NMP	69,675	80-38	USDI-NPS.

§ 81.424 Oklahoma.

Area Name	Acreage	Public law establishing	Federal land manager
Wichita Mountains Wild	8,900	91-504	USDI-FWS.

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Friday
November 30, 1979

Part V

Department of Agriculture

Farmers Home Administration

Rural Rental Housing Loan Policies, Procedures and Authorizations; Revision and Redesignation

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822 and 1944

Rural Rental Housing Loan Policies, Procedures, and Authorizations; Revision—Redesignation

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration proposes to amend and redesignate its regulations concerning rural rental housing loans. The action is taken because of the general administrative restructuring of Agency regulations and restructuring of the Agency field staff. It is also taken to strengthen the Agency's mission of rural development and strengthen Agency efforts to assist distressed communities and rural areas which have significant populations of poor and disadvantaged persons. The action will clarify and update the regulations and will provide uniformity between the numbering of FmHA regulations and the Code of Federal Regulations.

DATES: Comments must be received on or before December 31, 1979.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Hammond, Acting Director Rural Rental Housing Loan Division, Room 5331, South Agriculture Building, 14th and Independence SW., Washington, D.C. 20250, Telephone 202-447-7207.

SUPPLEMENTARY INFORMATION: This proposal revises Famers Home Administration regulations under Chapter XVIII, Title 7 in the Code of Federal Regulations by revising and redesignating the present Subpart D "Rural Rental Housing Loan Policies, Procedures, and Authorizations" of Part 1822, to a new Subpart E "Rural Rental Housing Loan Policies, Procedures, and Authorizations" under Part 1944. The specific amendments contained in the proposed regulations are as follows:

1. Section 1944.213(a) is revised to equate the amount of the State Directors approval authority the amount of loan that can be approved on any one project at any one time without the prior written concurrence of the National Office.

2. Section 1944.215(i)(1) is revised to require eligibility for occupancy to be determined based upon the combined incomes of all adult occupants.

3. Section 1944.215(i)(2) is added to clarify conditions under which the seemingly more temporary residents of the community may be considered eligible for occupancy.

4. Section 1944.215(1)(l) is revised to clarify that the borrower's initial investment in a project will not include any cash equity contribution which, when added to the loan amount, is in excess of the security value of the project.

5. Section 1944.231 is revised to: (a) Specify that while primary responsibility for loan making and servicing is in the Farmers Home Administration's District Office, County Offices may accept preapplications and assist applicants as needed; (b) specify the actions to be taken by the District Director; (c) specify the information necessary for submission to the National Office when review at the National Office level is either desired or required; (d) specify the priority criteria to be used in selecting preapplications for further processing; and (e) specify the conditions under which selected preapplications can be authorized for development into completed loan applications.

6. Section 1944.232(b) is revised to establish the District Director's responsibilities in application processing and review. It is also revised to permit the use of any processing check-list that may be developed to assist in application development and review.

7. Exhibit A-6 is revised to: (a) Permit the acceptance of a certificate of net worth in lieu of a financial statement from limited partnership; (b) require proposed general partners, stockholders, members, or beneficiaries to collectively possess sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirements of applicant organization not yet in legal existence at the time the preapplication is submitted; (c) require a certification of truth and accuracy on all financial statements; (d) clarify the information necessary to pass the test for other credit; (e) require a written, dated, and signed statement disclosing any identity of interest between the applicant and others to be used in connection with the construction of the project; and (f) require the completion of Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

8. Exhibit A-7 is revised to: (a) Clarify the demand for the project which can help justify the size of the project and mix of units proposed; (b) require a copy of the proposed management agreement; (c) clarify the contents of an acceptable management plan; and (d) require a schedule of any separate changes for the use of non-shelter services to be provided in a congregate housing project.

9. Exhibit A-8 is added to clarify the use of Exhibits A-8A, A-8B, and A-8C.

10. Exhibit C, paragraph V C 1 is revised to be more definitive concerning the information necessary for National Office review of exception requests.

11. Exhibit C, paragraph VI is revised to permit borrowers to select tenants for congregate housing projects in accordance with selection criteria specified in their FmHA approved management plans.

12. Exhibit H is revised by combining seven former certifications into two new certifications (shown as Exhibits H-3 and H-7) to serve the same function.

13. Exhibits J through R are revised to enable the controlled disbursement of interim financing as well as the use of supervised bank accounts.

14. Numerous revisions are made to place responsibility for loan making and servicing in the hands of District Directors rather than County Supervisors.

15. Numerous revisions are made to eliminate any connotation of sexual bias.

16. Numerous editorial changes are made.

Accordingly, it is proposed to delete Subpart D of Part 1822 and add a new Subpart E of Part 1944 as follows:

PART 1822—RURAL HOUSING AND GRANTS

§§ 1822.81-1822.98 [Subpart E]—[Deleted]

1. Part 1822 is amended by deleting Subpart D in its entirety.

2. Part 1944 is amended by adding a new Subpart E to read as set forth below:

PART 1944—HOUSING

Subparts A-C [Reserved]

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.201 General.
1944.202 Objectives.
1944.203-1944.204 [Reserved]
1944.205 Definitions.

Sec.
1944.206–1944.210 [Reserved].
1944.211 Eligibility requirements.
1944.212 Loan purposes.
1944.213 Limitations.
1944.214 Rates and terms.
1944.215 Special conditions.
1944.216–1944.220 [Reserved].
1944.221 Security.
1944.222 Technical, legal, and other services.
1944.223–1944.230 [Reserved].
1944.231 Selecting and processing preapplications.
1944.232 Preparation of completed loan docket.
1944.233 Loan approval.
1944.234 [Reserved].
1944.235 Actions subsequent to loan approval.
1944.236 Loan closing.
1944.237 Subsequent RRH loans.
1944.238 Coding loans as to initial or subsequent.
1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.
1944.240 Exception authority.
1944.241–1944.245 [Reserved].
1944.246 Rural Cooperative Housing Loan Policies, Procedures, and Authorization [Reserved].
1944.247 [Reserved].
Exhibit A How to bring rental housing to your town.
Exhibit A–1 Legal service agreement.
Exhibit A–2 Survey of existing rental housing.
Exhibit A–3 Rental housing survey.
Exhibit A–4 Rental housing survey summary.
Exhibit A–5 Statement of budget, income, and expense (excluding depreciation).
Exhibit A–5A Housing allowances for utilities and other public services.
Exhibit A–6 Information to be submitted with preapplication for rural rental housing (RRH) loan.
Exhibit A–7 Information to be submitted with Application for Federal Assistance (short form).
Exhibit A–8 Objective guides to assist management in determining the ability of tenants to sustain relative independence.
Exhibit A–8A Physical self maintenance scale (PSMS).
Exhibit A–8B Instrumental activities of daily living scale (IADL).
Exhibit A–8C Index of independence in activities of daily living scale (ADL).
Exhibit B Interest Credits on Insured RRH and RCH loans.
Exhibit B–1 Example of Interest Credit determination for RRH or RCH projects (Plan II).
Exhibit C Rental Assistance Program.
Exhibit D Guide letter for use in Informing Interim Lender of FmHA's Commitment.
Exhibit E Articles of Incorporation (Not for Profit).
Exhibit F Bylaws.
Exhibit G RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units).
Exhibit H RRH Loans and the HUD Section 8 Housing Assistance Payments Programs (New Construction).
Exhibit H–1 Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949.
Exhibit H–2 Section 8 Housing Assistance Payments program: Information Aid For New Construction.
Exhibit H–3 Suggested Proposed Certification Format (Section 8/515 Program).
Exhibit H–4 Equal Opportunity Site And Neighborhood Standards Checklist.
Exhibit H–5 Certification by the applicant.
Exhibit H–6 Guide letter for Architect's Certification.
Exhibit H–7 Suggested Project Completion Certification Format (Section 8/515 program).
Exhibit I Memorandum of Understanding Between Farmers Home Administration and Administration on Aging.
Exhibit J Loan Resolution of ———, 19— (RRH Loan to Broadly Based Nonprofit Corporation).
Exhibit K Loan Resolution of ———, 19— (RRH Insured Loan to Profit Type Corporation).
Exhibit L Loan Resolution of ———, 19— (RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis).
Exhibit M Loan Agreement (RRH Loan to a Limited Partnership).
Exhibit N Loan Agreement (RRH Loan to a Limited Partnership Operating on a Limited Profit Basis).
Exhibit O Loan Agreement (RRH Loan to a Partnership).
Exhibit P Loan Agreement (RRH Loan to a Partnership Operating on a Limited Profit Basis).
Exhibit Q Loan Agreement (RRH Insured loan to an Individual).
Exhibit R Loan Agreement (RRH Loan to an Individual Operating on a limited Profit Basis).
Subparts F–J [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objectives.

The basic objective of RRH loans is to provide eligible occupants economically designed and constructed rental housing and related facilities suited for their living requirements.

§ 1944.203–1944.204 [Reserved]

§ 1944.205 Definitions.

(a) *Household.* (1) One or more persons who maintain or will maintain residency in one rental unit. Eligibility for occupancy is outlined in § 1944.215 (i).

(b) *Senior citizens or handicapped persons.* Any senior citizen provision in this Subpart will also apply to handicapped persons. The two terms are defined as follows:

(1) *Senior citizen.* A person 62 years of age or over and may be either the tenant or co-tenant. A person(s) younger than 62 years of age may reside with a senior citizen provided (i) the person is considered a member of the household of the senior citizen, or (ii) the person's occupancy can be shown to be necessary for the well being of the senior citizen. The term "senior citizen" also includes the elderly as used in this Subpart.

(2) *Handicapped person.* A person, or in the case of a household either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets either of the following qualifications:

(i) A person who has an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) A person who is a developmentally disabled individual. A developmentally disabled individual is a handicapped person with a severe, chronic disability which: (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is manifested before the person attains age twenty-two; (C) is likely to continue indefinitely; (D) results in substantial functional limitations in three or more of the following areas of major life activity: (*1*) self-care, (*2*) receptive and expressive language, (*3*) learning, (*4*) mobility, (*5*) self-direction, (*6*) capacity for independent living, and (*7*) economic sufficiency; and (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Senior citizens or handicapped persons will be considered eligible occupants without regard to income for projects not operated under interest credit Plan I or II.

(c) *Resident assistant.* A person(s) residing in the living unit who is essential to the well being and care of, the senior citizen or handicapped person(s) and who is not related by blood, marriage, or operation of law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive service(s).

(d) *Low or moderate income household.* Households having incomes within the limits of the maximum adjusted income as outlined in Exhibits C and D of Subpart A of Part 1822 of this Chapter (Farmers Home Administration (FmHA) Instruction 444.1).

(e) *Plan I and Plan II.* The two interest credit plans outlined in Exhibit B of this subpart.

(f) *Eligible occupants.* Eligible occupants in a project may be either the elderly, handicapped, or low and moderate-income persons,or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement. The term "occupant" also includes the tenant as used in this Subpart. The occupants must:

(1) For the purpose of a loan developed under this Subpart, generally be residents of the community who are generally capable of caring for themselves. However, in the case of congregate housing with supportative services, this may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. All occupants, however, must meet the following criteria:

(i) Be independently able to vacate the unit for their own safety in emergency situations.

(ii) Be able to provide for their own sustenance in projects that provide less than full food service.

(iii) The occupant or legal guardian must possess the legal capacity to enter into a lease agreement.

(2) For a direct loan or a loan developed under Plan I, be:

(i) A senior citizen or handicapped person with a low or moderate income, or

(ii) Any household with a low income.

(3) For loans developed under Plan II, be persons with a low or moderate income.

(4) For all other loans be persons with a low or moderate income or senior citizens without regard to income.

(g) *Housing.* Structures in a rural area which are or will be suitable for, and available to, eligible occupants for dwelling use to provide congregate or completely independent living on a rental basis. The structures may include related facilities where appropriate.

(h) *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

(1) Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities, such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single person dwelling is considered a unit.

(2) A group living arrangement where one or more senior citizens or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single person dwellings or a multi-unit structure.

(i) *Related facilities.* Related facilities may consist of community rooms or buildings, cafeterias, dining halls, appropriate recreation facilities, and other esential service facilities such as central heat, sewerage, light systems, ranges and refrigerators, clothes washing machines and clothes dryers, and a safe domestic water supply. Under special conditions, such as a congregate housing project or a project housing handicapped tenants, space may be provided for cafeterias, dining areas, an infirmary, therapy room, special bathing room, and other special areas needed by the elderly and handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan to equip these facilities. When ranges, refrigerators, dish washing machines, dish dryers and other kitchen equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(j) *Project.* A project is the total number of rental housing units to be built or to be purchased by one applicant in one market area at any one time. Subsequent loans may be made to complete the units started with the initial loan. Additional units or additional projects in the same market area may be developed on a contiguous or separate tract of land at a later time if it can be shown that there is a need for this project in the market area and if the project already developed is operating successfully.

(k) *Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. It includes necessary architectural, engineering, legal, and official fees and charges and other appropriate technical and professional fees and charges. For nonprofit organizations and State or local public agencies the development cost may include initial operating expenses up to 2 percent of the aforementioned costs. It does not include fees, charges or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitation of loans.

(l) *Rural area.* Open country or rural places as defined in § 1822.3(c) of Subpart A to Part 1822 of this chapter (paragraph III C of FmHA Instruction 444.1).

(m) *Individual.* A natural person.

(n) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership, or limited partnership.

(o) *Private nonprofit corporation.* A corporation which (1) is controlled by private persons or interests, (2) is organized and operated for purposes other than making gains or profits for the corporation or its members, (3) is legally precluded from distributing to its members any gains or profits during its existence, and (4) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipality corporation which will operate the housing for the same or similar purposes.

(p) *Profit corporation.* A corporation (1) which is controlled by private persons or interests, (2) whose organization permits the making of gains or profits for the corporation or its members, (3) which is authorized to do business in the state, and (4) which can legally carry out the purposes of the loan.

(q) *Consumer cooperative.* A corporation which (1) is organized as a cooperative, (2) will operate the housing on a nonprofit basis solely for the benefit of the occupants, and (3) is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose any patronage refunds

to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(r) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215 (1). The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

(s) *Profit basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford.

(t) *Limited partnership.* a partnership consisting of (1) one or more general partners jointly and severally responsible as ordinary partners, and by whom the business is conducted, and (2) one or more special partners, contributing in cash payments a specific sum as captial to the common stock, and who are not liable for the debts of the partnership beyond the funds so contributed.

(u) *Owner-builder.* A qualified builder-applicant who is capable of, and will build, the RRH project.

(v) *Security value.* As used in this subpart, the security value means the present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past-due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

(w) *Gains or profits.* For the purpose of § 1944.205 (o) and (p), gains and profits do not include dividends payable on stock which is (1) nonvoting, (2) limited as to the amount of dividends that can be paid thereon, and (3) limited as to liquidation value in the event of corporate dissolution.

(x) *Members and membership.* These terms include stockholders and stock when appropriate.

(y) *Board and directors.* The governing body and members of the governing body of an organization.

(z) *Note.* This term also includes a bond or other form of obligation.

(aa) *Mortgage.* This term also includes any appropriate form of security instrument.

(bb) *Office of the General Counsel (OGC).* The Regional Attorney or the attorney in charge who provides legal services to the FmHA for the particular State.

§§ 1944.206–1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be either an individual who is a citizen of the United States, or an organization defined in § 1944.205(n) which will provide housing for eligible occupants as defined in § 1944.205(f).

(2) Be unable to provide the housing from its own resources and with the exception of a state and local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the applicant to rent the units for amounts that are within the payment ability of eligible low- and moderate-income, senior citizen or handicapped occupants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For profit organizations, the assets of the individual members or stockholders will be considered.

(iii) For nonprofit organizations, the assets of the individual members will not be considered.

(iv) For a loan to provide congregate housing with central dining facilities or space for other services, provided by the RRH loan, the applicant must be able to (A) operate such facilities with its own funds other than rent, or (B) obtain such funding from other sources, or (C) lease such facilities to an individual organization or firm with the ability to operate the facilities. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt service, and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made. This is not intended to preclude the leasing of the housing in accordance with the Department of Housing and Urban Development (HUD) Section 23 leasing program.

(4) Own the housing and related land, or become the owner when the loan is closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the RRH loan against the property will not exceed the maximum security value determined in accordance with Part 1809 of this chapter, (FmHA Instructions 442.2 or 442.3 (available in any FmHA office) as appropriate).

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate being paid for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event or abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(5) Have or be able to obtain initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishing and equipment, printing lease forms, and other initial operating expenses. The initial operating capital required will be at least 2 percent of the total development cost of the project. It shall be deposited into the general fund account in accordance with the provisions of the Loan Agreement and Loan Resolution and will be used for such authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital will be increased sufficiently to cover the cost of these items.

(iii) In the case of congregate housing involving a group living arrangement, the applicant/borrower will not include in the budget items (Exhibit A–5, item 12) any salary, wages or expense items to compensate the resident assistant(s). Therefore, these expense items must be provided by other sources. However, this will not preclude the resident assistant for receiving compensation for any duties performed by a resident manager or caretaker in a typical RRH project.

(6) Possess the ability, experience, and the legal and financial capacity to incur and carry out the undertakings and obligations required for the loan.

(7) Agree to comply with all requirements of the FmHA such as those set forth in the loan resolutions, loan agreement, the form of note, the mortgage, and FmHA regulations.

(8) Necessary management will be provided to assure the successful operation of the project. Management services may be provided by the applicant, a management firm, or an agent. If the borrower or a member of the borrower organization does not live close enough to the project to provide the general supervision, a management firm or an individual located in close proximity who is experienced and has full authority to act on behalf of the owner must be retained. Generally, projects of more than 12 units should have a resident manager/contact person on the project site. Projects which are not large enough to justify a resident manager must, at a minimum, have an attractive sign in a conspicuous location providing the name, address, and telephone number of the local contact person able to speak on behalf of project managment.

(9) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements:

(A) Each member must be limited to one vote in the affairs of the organization.

(B) A majority of the members must reside in the community or the trade area where the housing will be located.

(C) The Board of Directors must not be less than 5, and must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(D) The directors must be members of the organization.

(E) Not less than five of the directors must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(F) The organization must have and maintain a broadly-based membership representing or reflecting a variety of interest in the community. For a loan of less than $100,000, the organization should have at least 25 members. The number of members should be increased for larger projects. Factors such as the prospect for competent management and supervisions and adequate community support of the housing project over the expected life of the loan, the present and future effective demand for the housing by persons who will be eligible for occupancy, and the ratio of the amount of the loan to the appraised value of the security are vitally important.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in the appropriate FmHA Supplement. The State Director, with the assistance of OGC, will develop a model set of articles of incorporation and bylaws for the State which will be consistent with the provisions of Exhibits E and F, modified as appropriate in accordance with the State law.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) of this section with the exception of § 1944.211(a)(9)(i)(B):

(A) The membership base should be representative of the area being served with at least 5 members representing a variety of interest from each community where the housing will be located. Each member must be limited to one vote in the affairs of the organization.

(B) The Board of Directors should be representative of each community or trade area where the housing is located.

(C) The total number of directors should not be less than 5 and the directors must be members of the organization.

(D) The organization's articles of incorporation and bylaws must include the requirements outlined in § 1944.211 (a)(9)(ii) (A) and (B).

(10) In the case of a limited partnership:

(i) The general partners will be required to maintain a minimum of 5 percent financial interest in the organization.

(ii) The general partners must agree that new partners can be brought into the organization only with the consent of the Government as outlined in the loan agreement.

(b) *Authorized representative of applicant.* The FmHA will deal only with the applicant or a bona fide representative of the applicant and the representative's technical advisers. An authorized representative of the architectural or construction contracts, the purchase of a nonprofit applicant must have no pecuniary interest in the award equipment, or the purchase of the land for the housing site.

§ 1944.212 Loan purposes.

RRH loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing housing only when major modifications, repairs, or improvements to the housing are necessary to meet the requirements of decent, safe, and sanitary living units. Loans will not be made for the purchase of adequate housing not in need of major rehabilitation. Major rehabilitation shall not be considered to be minor items of development work such as painting, cleaning, and improvements to related facilities.

(1) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the eventual residents of the structure after rehabilitation.

(2) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Substantially meet the Minimum Property Standards (MPS) requirements for new construction.

(ii) Create a suitable and appealing living environment, and be substantially equivalent to new construction in quality, livability, design, and all other respects.

(iii) Have a total development cost equal to or less than that of new construction in the same area.

(3) Complete plans and specifications for rehabilitation will be provided for

review and approval. The plans, specifications, and other pertinent documents must be in sufficient detail to leave no question as to the work to be performed or the materials to be used.

(4) The rehabilitated project must generally meet the provisions of § 1944.215(a).

(5) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) could be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with that commercial space. In order to determine the correct RRH loan amount for the residential development of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) From the complete cost breakdown, the costs that can be easily and appropriately identified as being part of the commercial portion of the structure should be isolated as such, and likewise the costs easily and appropriately identified with the residential portion should be isolated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair and renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential occupants) should be prorated between the two uses based upon the square footage floor space used in each of the two uses.

(iv) For the purposes of the loan limitations set forth in § 1944.213(a) (1) or (2), the term "development cost" shall mean the development costs associated with prorated to the residential use of the structure, and the term "security value" shall mean the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221.

(6) The applicant may not lease any commercial space which may be permitted in a structure in accordance with § 1944.212(b)(5) without the prior written consent of the FmHA District Director. The advice of OGC will be obtained prior to loan closing as to any modifications needed in the mortgage, loan agreement, or loan resolution to enforce this requirement. In addition, the FmHA District Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises should FmHA withdraw its consent to the lease.

(ii) The proposed use of the leased space has a symbiotic and mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure as rental housing.

(iii) The terms of the lease and the proposed use of the leased space does not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure for the purposes for which the loan is made.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this Subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the present market value in its present condition. Present market value will be determined by a current FmHA appraisal in accordance with applicable FmHA regulations. Purchase price in excess of present market value will not be included in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest. With prior approval of the State Director, however, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant-organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, when:

(i) The cost of the excess land is a reasonable portion of the loan.

(ii) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(d) Develop and install water supply, sewage disposal, streets, and heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured right to use of the facility for at least the life of the loan and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project, or funds are limited to the prorated part of the total cost of the facility, according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services to supplement the kitchen facilities in each unit. All equipment purchased with the loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables should be attached to the real estate in a manner to prevent easy removal. In determining whether to finance such facilities, the long-term availability of assistance from local organizations and other State or Federal agencies such as the Area Agency on Aging or the local office of the State Vocational Rehabilitation Agency or State developmental disabilities or mental health agency should be considered. Exhibit I of this Subpart is to be used as a guide in working with the Administration on Aging (AoA) and State agencies in providing support services. If needed in the community, FmHA may permit facilities in the project larger than that required solely by the tenants provided other sources of funds are available to pay a prorata share of the cost. Whenever such facilities are provided with loan funds, the following conditions must be met:

(i) The meals to be provided must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, such charges must be separate from their rental charges.

(ii) If the operator of the facility is the type of entity that is eligible to accept Food Stamps under the regulations of the Food and Nutrition Service (FNS) of

the USDA, such operator must be authorized by FNS to accept Food Stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) for those services must be fully documented by a signed statement from the applicant, if it will provide the services, or in a lease agreement, if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approval official and contain the following statement:

This agreement shall not be effective unless and until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

Farmers Home Administration

(Date)_____
By _____
(Title)_____

(4) Space for a small infirmary for emergency care only when justified.

(5) Laundry room and equipment.

(6) Appropriate recreational and other facilities to meet essential needs.

(f) Construct office and living quarters for the resident manager and other operating personnel if such facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Construct fallout shelters or similar structures.

(h) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. Laundry facilities are required in all projects, and clothes washers and dryers should be provided in a central laundry room. Normally, about one washer and dryer should be provided for every 8 to 12 units in the project at a minimum. Clothes washers and clothes dryers may not be installed in individual rental units if the inclusion of such items in the individual units is not customary in the area for the size of project and type of housing involved. Whenever practical, this equipment should be attached to the real estate in a manner to prevent easy removal.

(i) Purchase and install essential equipment which upon installation becomes a part of the real estate. §§ 1944.205 (i) and 1944.213 (b) contain further guidance on the use of loan funds to purchase certain equipment.

(j) Provide landscaping, foundation planting, seeding or sodding of lawns, or other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(k) Pay related costs such as fees and charges for legal, architectural, engineering and other appropriate technical and official services. Such fees and charges may be paid to an applicant or to an officer, director, trustee, stockholder, member, or agent of the applicant provided such fees and charges are reasonable and typical for that area and are earned. Ordinarily FmHA will furnish the needed guidance for the development of an RRH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(l) Pay interest which will accrue on the RRH loan during the estimated construction period.

(m) Pay interest and other customary charges necessary to obtain interim financing.

(n) Pay initial operating expenses up to 2 percent of the development cost for nonprofit organizations and State and local public agencies.

(o) Purchase housing from an interim lender that holds free and clear title to an RRH project upon which construction commenced pursuant to § 1944.235(b)(1) and after issuance of a letter of commitment to the interim lender in accordance with this subpart, when all of the following conditions exist:

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown as Exhibit D to this Subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit D to this Subpart for the construction of the project.

(3) The project is substantially complete, see § 1944.235(b)(1)(vi) all work has to be satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications, and contract documents, and is in compliance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5).

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this Subpart have been met.

(p) Purchase an RRH project in which the original applicant/borrower or the contractor has defaulted before the project is completed and in which a letter of commitment dated prior to July 26, 1978, was issued to an interim lender.

§ 1944.213 Limitations.

(a) *Loan limits.* For all applicants, the amount of the RRH loan or loans on each project at any one time will be limited to a maximum amount of the State Director's loan approval authority unless prior written concurrence and authorization to develop an application for a larger project is obtained in advance from the National Office. If the State Director recommends a larger project, the preapplication and detailed information on the need and market for the project will be submitted to the National Office with the State Director's specific recommendations before Form AD-622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan can be made. Additional loans may be made on the same or contiguous site, without regard to this limitation provided the previous project is completed and the housing has been successfully operated for at least 12 months. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For private nonprofit corporations, consumer cooperatives, State or local public agencies, and other nonprofit organizations, the amount of the RRH loan or loans will be limited to the development cost or the security value of each project, whichever is less.

(2) For all other applicants, the amount of the RRH loan or loans will be limited to more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less. The applicant's contribution must be in the form of either cash or land or a combination of both.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) The purchase of a partially completed project except as provided in § 1944.212(p) or for the purchase of an

existing housing project unless the provisions of § 1944.212(b) or § 1944.212(o), as applicable, can be met.

(2) Housing or related facilities which are elaborate or extravagant in design or materials.

(3) Nursing or medical facilities other than a small emergency-care infirmary when justified by the size of the project and the fact that facilities for the emergency care expected to be needed by the occupants are not readily accessible elsewhere.

(4) Specialized equipment for training and therapy.

(5) Any commercial facilities except essential service-type facilities for use by the tenants when such facilities are not otherwise conveniently available in the area.

(6) Housing to be used primarily for serving temporary residents of the community, or to be used for any transient or hotel purposes. No rental term will be for less than 30 days.

(7) Nursing homes, special care facilities, or institutional—type homes. This limitation should not, however, preclude making loans for housing which is designed for occupancy by senior citizens or handicapped persons who are capable of caring for themselves, but will not live on a totally independent basis because of a need for some supervision and central services. Loan funds will not be used to finance these support services.

(8) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishing, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.

(9) Any facility not essential to the needs of the tenants.

(10) Refinancing debts of the applicant except:

(i) As authorized in § 1944.213(c) and § 1944.235(b)(1), or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien has existed for more than 5 years before the date of the application, a subordination or release cannot be obtained, and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes shall be limited to the amount necessary to obtain the release and, in any case, shall not exceed the "as is" value of the land as determined in accordance with FmHA Instruction 422.3, (available in any FmHA Office).

(11) Housing which the applicant plans to sell in the near future.

(12) Housing which the applicant plans to lease to another operator except as provided in § 1944.211(a)(3) for leases to public housing authorities.

(13) Payment for any fee, charge, or commission to any broker, negotiator, or other person for the referral of a prospective applicant or solication of a loan.

(14) Payment of any fee, salary, commission, profit, or compensation to an applicant, or to any officer, director, trustee, stockholder, member, or agency of an applicant, except as provided in §§ 1944.212(c)(2)(k) and 1944.222(d).

(15) Land which the applicant or a member of an applicant-organization, or from any other organization in which any member of the applicant-organization has an interest, except as authorized in § 1944.212(c)(2).

(c) *Obligations incurred before loan closing.* When an applicant files an application for a loan, the County Supervisor or District Director, as appropriate, will advise the applicant not to start construction or incur any indebtedness until the loan is closed, with the exception of those cases involving interim financing, and then the guidelines outlined in § 1944.235(b)(1) will apply. If, nevertheless, the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay such debts when the State Director finds that all of the following conditions exist:

(1) The debts were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) after the submission of a preliminary proposal to HUD in the case of a project involving the Section 8 Housing Assistance Payments program with a loan made in compliance with this Subpart; or (iii) prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iv) prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such debts from the applicant's own resources or to obtain credit from other sources, and failure to authorize the use of loan funds to pay such debts would impair the applicant's financial position.

(3) The debts were incurred for authorized loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment on the debts will remove any liens which have attached, and any basis for liens that may attach, to the property on account of such debts.

§ 1944.214 Rates and terms.

(a) *Interest.* Loans will be made at interest rates specified in Exhibit B to FmHA Instruction 440.1 (available in any FmHA office).

(b) *Amortized period.* Each loan will be scheduled for payment within such period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note.

§ 1944.215 Special conditions.

(a) *Type of housing.* All housing must meet the following requirements:

(1) Be economical in construction and not of elaborate or extravagant design or materials. As a general rule, the square footage living area of new rental units and related facilities to be constructed with RRH loan funds should be within the guidelines listed below.

Type of Unit and Maximum Living Area

1-Bedroom Units, 570–700 sq. ft.
2-Bedroom Units, 700–850 sq. ft.
3-Bedroom Units, 850–1020 sq. ft.
4-Bedroom Units, 1020–1200 sq. ft.

(i) An additional 100–120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living is on two floor levels of the rental unit, the maximum square footage of living area may be exceeded by up to 12 percent, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the HUD MPS 4910.1. Minimum room sizes may be determined by the minimum areas and least dimensions listed in the MPS or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square footage area should be within the guidelines set forth in the HUD Manual of Acceptable Practices (MAP) 4930.1.

(2) As a general rule, consist of multi-unit type housing with two or more person units and any appropriate related facilities. However, in some congregate housing cases, single household dwellings may provide for a group living arrangements, if the senior citizen or handicapped persons' need cannot be met in multi-unit structures.

Such group-type single household dwellings, if financed, must meet the following requirements:

(i) Consist of single household dwellings that can be easily converted to a rental or homeownership unit for a family in the event the need for such housing by senior citizens or handicapped persons ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule the support services must be provided by a State or local public agency. However, a nonprofit organization with a good track record and an ongoing program may be considered capable of providing these support services.

(iii) The senior citizen or handicapped person(s) to be housed must be capable of caring for themselves except for some supervision and support services.

(3) Be residential in character and be designed to meet the needs of eligible occupants. Generally, RRH units not be more than two-story structures. However, in some cases, especially those projects designed for occupancy by senior citizens or handicapped persons, low-rise structures with elevators can be considered on an individual case-by-case basis, with prior written authorization from the National Office, when the following conditions exist:

(i) There is a serious shortage of suitable building sites, and the number of units needed cannot be built due to lack of space on the site and other buildings sites are not available.

(ii) Land costs are such that one- or two-story construction would result in a unit cost and rental rates in excess of what eligible occupants can afford.

(iii) The number of stories proposed for the rural rental housing structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures and the applicant's market survey report, submitted in accordance with Exhibit A–7 of this subpart, must identify market acceptability for the number and type of low-rise rental units proposed.

(iv) The cost of the units should compare favorably with one- and two-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State Architect or Engineer has reviewed the plans, specifications, and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the HUD MPS 4910.1. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Consideration must be given to safety, convenience, and comfort of the prospective tenants.

(5) Based on the demand shown by a market analysis, it may include "efficiency" type, one, two, three or more bedroom units.

(6) Contain bathroom and kitchen facilities in each unit. In the case of group living arrangements, each single household dwelling is considered a unit. Congregate housing projects with central dining facilities may have somewhat limited kitchen facilities, but must contain as a minimum, a cooktop, a refrigerator, and a small oven in each unit. The kitchen facilities in a single household dwelling for a congregate housing group living arrangement may be designated to meet the special needs of the tenants.

(7) All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly.

(8) Be designed to provide for the greatest energy conservation and promote the concept of modest housing and yet provide a highly desirable and attractive environment for the tenants.

(b) *Determination of per unit rental rates for group living arrangements.* To determine the amount of rental payment to be collected per unit for congregate housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (the sum of items 12 and 20 of Exhibit A–5) will be divided by the total number of units (bedrooms) to be occupied by the *tenant(s).* [If the project also includes conventional rental apartment units (1, 2, 3, etc. bedroom units), each of these *units* (not bedrooms) will be added to the number of units (bedrooms) contained in the housing involving group living arrangement, and the total number of units divided into the sum of items 12 and 20.] In the case of congregate housing involving a group living arrangement, each bedroom will be counted as if it were one rental unit. However, the bedroom occupied by the resident assistant will be excluded and will not be counted in making the determination of rental payment to be charged to all the other bedrooms occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(c) *Deferred principal payments.* (1) When necessary and advisable, principal payments may be deferred for the first full year or the first full two years after loan closing. Payments of accrued interest cannot be deferred.

(i) When interim financing is used, it should not be necessary to defer principal payments.

(ii) When multiple advances are used, principal payments should not be deferred beyond the first annual anniversary date of the note following the anticipated date of construction completion, since payments are deferred only to permit the project to be completed.

(2) Monthly payments of accrued interest should be implemented beginning the month construction is completed. However, if the project is not completed by the date of the interest only payment(s) as shown on the note, the note date(s) will determine the time of the interest only payment. [See Forms Manual Insert (FMI) for Form FmHA 440–16, "Promissory Note," available at any FmHA Office, for the payment schedule.]

(d) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of the FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which the FmHA considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability.

(e) *Loan resolution or loan agreement.* A loan resolution or loan agreement provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving the FmHA power to impose requirements regarding the housing and related operations of the applicant. The form of loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. This is particularly important for applicants operating on a limited profit basis. If any provisions are not appropriate to a particular case, proposed substitute language will be approved by FmHA and OGC. Forms of loan resolutions and loan agreements are contained as Exhibits to this Subpart and will be executed as follows:

(1) Exhibit J will be used by all nonprofit organizations and for state or local public agencies.

(2) Exhibit K will be used by profit type corporations.

(3) Exhibit L will be used by profit type corporations operating on a limited profit basis.

(4) Exhibit M will be used by limited partnerships operating on a profit motivated basis.

(5) Exhibit N will be used by limited partnerships operating on a limited profit basis.

(6) Exhibit O will be used by a partnership operating on a profit motivated basis.

(7) Exhibit P will be used by a partnership operating on a limited profit basis.

(8) Exhibit Q will be used by an individual operating on a profit motivated basis.

(9) Exhibit R will be used by an individual operating on a limited profit basis.

(f) *Multiple advances.* Loan funds will be disbursed in accordance with the provisions outlined in § 1944.235.

(g) *Interest credits and rental assistance.* (1) Borrowers may receive interest credits provided they meet the requirements outlined in Exhibit B of this Subpart.

(2) Rental assistance may be provided to eligible tenants in eliible projects in accordance with Exhibit C of this Subpart.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, marital status, or national origin, and will comply with Subpart E of Part 1901 of this chapter.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible occupants as defined in § 1944.205 (d) and (f). The following policies will apply:

(1) When a family consists of only one person, an additional person or persons may reside in the unit provided the unit has adequate space for their total needs and provided the combined incomes of the occupants does not exceed the levels set for the Project in accordance with § 1944.205 (f) and as defined in Exhibits C and D of Subpart A to Part 1822 of this Chapter, (FmHA Instruction 444.1). A resident assistant may occupy living space in a congregate housing group living arrangement without regard to income. In cases involving deceased senior citizens or handicapped tenants, only the surviving member(s) of the household of the deceased senior citizen or handicapped person who was living in the unit under the above stated guidelines with the deceased senior citizen or handicapped person at the time of his or her death may continue to occupy the rental unit as a tenant. The surviving household member(s) must meet all the eligibility requirements for occupany except that of being a senior citizen or a handicapped person. If the borrower receives interest credits, the rent paid for the unit will be based on the combined incomes of the occupants.

(2) Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a project may be considered an eligible tenant if all of the following conditions are met:

(i) The person seeking occupancy is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(ii) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(iii) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(iv) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

(3) Ineligible persons may occupy the housing for temporary periods in order to protect the interest of the Government in accordance with Exhibit B of this subpart.

(4) For housing projects financed with RRH loans and limited to occupancy by eligible senior citizens or handicapped tenants, the State Director is authorized to permit the borrower to rent units to other eligible low- and moderate-income families and persons, provided such units will be rented on a temporary basis and only until they can be rented to eligible senior citizens or handicapped persons.

(5) Congregate housing projects which involve a group living arrangement may limit occupancy to eligible developmentally disabled individuals. This limitation will be outlined in the applicant/borrower's management plan.

(6) In congregate housing projects, including those involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves a determination concerning the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee, and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competence in the activities of daily living, or it can be made through social or medical sources. The functional impairments of tenants should be verified by one of the following methods.

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with an assist from service(s).

(ii) By the use of any objective guide, such as the following three objective guides which are further explained in Exhibit A–8 of this Subpart:

(A) The Physical Self Maintenance Scale (Exhibit A–8A) may be used to measure a person's capacity for personal care.

(B) The Instrumental Activities of Daily Living Scale (Exhibit A–8B) may be used to measure a person's capacity for continued living in the project.

(C) The Index of Independence in Activities of Daily Living (Exhibit A–8C) may be used to measure the relationship of functional capacity to the accomplishment of daily activities, such as bathing, dressing, toilet performance, transferring (from prone to upright position and back again) continence, and eating.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 444–8, "Tenant Certification," as follows:

(1) Initial certification will be executed for each household when it initially occupies the housing. Borrowers will promptly provide the District Director with an executed copy of these forms.

(2) Recertification will be completed by having a new Form FmHA 444–8 executed at least annually by each tenant. The certification forms will be obtained by the borrower and a copy provided to the District Director to verify continued tenant eligibility and the amount of interest credit or rental assistance given to the borrower.

(3) The incomes reported by all tenants must be verified by the borrower. Such verification may be obtained by:

(i) Using Form FmHA 410–5, "Request for Verification of Employment," or verification forms prepared by the borrower or other sources. Until Form FmHA 410–5 is revised, it may be modified by deleting "to the Farmers Home Administration" in the last sentence of the Instructions; deleting "Farmers Home Administration" in Part I, item 2 and inserting the name and address of the borrower or management agent to whom the form is to be returned; deleting "applied for a Farmers Home Administration loan and" in the first sentence and the word "loan" in the second sentence of the applicant's statement in Part I; and by deleting the complete last sentence below the employer's signature.

(ii) In the case of the elderly or other persons whose income is not from wages or salary, by actually examining the income checks, check stubs, or other reliable data the tenant possesses.

(4) Form FmHA 444–8 need not be required of tenants who have executed Form HUD 52659 "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

(k) *Supervisory assistance.* Supervision will be provided borrowers, in accordance with Subpart G of Part 1802 of this chapter (FmHA Instruction 430.2), to the extent necessary to achieve the objective of the loan and to protect the interests of the Government.

(l) *Limited profit determinations.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment. However, once the loan is made, the percentage return to the applicant agreed upon or indicated in the loan agreement or loan resolution, will not be changed. The initial investment may exceed the required 5% in § 1944.213(a)(2) and may include the following:

(1) Any cash contribution which, when added to the FmHA loan amount, is not in excess of the security value of the project.

(2) Value of the building site or essential related facilities contributed by the applicant. Value will be determined by an appraisal in accordance with applicable FmHA regulations on "as is" basis by the FmHA employee authrized to make the appraisal for the project less any amount owned on the property.

(3) The initial operating capital that the applicant is required to provide in accordance with § 1944.21(a)(5)

(m) *RRH loans made in connection with HUD Section 8 Housing Assistance Payments program.* RRH loans involving the HUD Section 8 Housing Assistance Payments program under the Memorandum of Understanding (Exhibit H–1) will be handled in accordance with Exhibit H of this Subpart. Any applicant who has obtained approval of use of Section 8 units from HUD or a State Housing Finance Agency, which cannot be processed in accordance with Exhibit H, may be processed in accordance with HUD's regulations under a dual track processing system provided all other requirements of this Subpart are met. When a dual track processing system is followed, the provisions of paragraph II of Exhibit H to this subpart allowing for an interest rate reduction (interest credit) may be followed. Section 8 Housing Assistance Payments for existing housing will be handled in accordance with Exhibit G of this subpart.

(n) *Implementation of Office of Management and Budget (OMB) Circular A–95 concerning formulation, evaluation, and review of Federal programs and projects having significant impact on area and community development.* When projects will have 25 or more units, the provisions of FmHA Instruction 1901–H will be applicable. FmHA shall give all due consideration to clearinghouse comments and priority recommendations.

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with FmHA Instruction 1901–G. Projects involving Section 8/515 loans shall also comply with Exhibit H of this subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Insurance Administration (FIA) of HUD Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will be applicable.

(q) *Location of housing.* (1) The location of the housing project should expand the supply of decent, safe, and sanitary housing for low- and moderate-income, senior citizens, and handicapped persons in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority residents. The location should promote a greater choice of housing opportunities and avoid undue concentration of eligible tenants in areas containing a high proportion of low-income persons, and should further fair housing.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (mentally handicapped must possess the capacity to enter into a legal contract), thereby opening up nonsegregated housing opportunities for minorities and helping overcome the effects of any past discrimination. To the extent possible, the location of an RRH project should provide housing opportunities for minorities outside areas of minority concentration and areas which are already substantially racially mixed. An area of minority concentration is any part of a community adjacent to or within the confines of a greater area such as a place, town, village, or city in which the majority of the residents are minority. If the proposed location is in an area of minority concentration, it will not be accepted unless:

(i) Comparable housing opportunities exist outside the minority area for minorities in the income range to be served by the project; or

(ii) The applicant provides written documentation which adequately demonstrates that there are no other acceptable sites available outside the area of minority concentration, and housing on the proposed site is necessary to meet an overriding housing need in the market area.

(3) Except as otherwise permitted by paragraph (q)(4) of this section housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures located in the downtown business areas of those rural communities that have established a comprehensive strategy for meeting their community development and housing needs, and that strategy includes the redevelopment, rehabilitation, restoration, or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) must be readily available in close and convenient proximity to the site, and they must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting indentified community development and housing needs, particularly the needs of eliminating or preventing economic decay, slums, or blight; the needs of benefiting the lower income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment, and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) Neighborhood revitilization: The Strategy for alleviating physical deterioration, for maintaining viable neighborhoods, and for stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) Housing: The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved Housing Assistance Plan would be helpful as part of this component strategy.

(C) Economic development: The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base, or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (q)(4)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be made available to FmHA verifying the intended commitment of public and private resources which will be available for completing the other integrally related redevelopment/revitalization activities being undertaken in the downtown business area together will applicant's proposed RRH project.

(v) If the structure to be built or rehabilitated is more than two stories, the housing must be designated and designed for occupancy only by senior citizens and handicapped persons.

(vi) Prior review and concurrence must be received from the FmHA National Office before the FmHA State Director or District Director authorizes the applicant to develop a complete application. All of the information requested in § 1944.215(q)(4) must be provided by the applicant before National Office review.

(r) *Clean Air Act and Water Pollution Control Act requirements.* (1) As a condition for FmHA's making a loan in excess of $100,000 and unless otherwise exempted, an applicant for a loan will:

(i) Comply with all requirements of section 114 of the Clean Air Act (42 U.S.C. 1857 C-9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 26, 1975.)

(ii) As a condition for the award of contract, notify FmHA of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to contract award.)

(iii) Certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award; and

(iv) Include or cause to be included the above criteria and requirements in every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(2) As a further condition for FmHA's making loan in excess of $100,000 but not otherwise exempted, the applicant for the loan will secure the services of a contractor who agrees to comply with the provisions in paragraph (r)(1) of this section. (3) The term "facility" as used in this section only means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographical area.

(s) *Approval of construction contracts.* Construction contracts between the borrower and contractor for development of an RRH project will contain a provision that the contract is not in full force and effect until it has been approved by the State Director or the State Director's delegate in writing. This approval relates to form, content, and proper execution of the document and statement that FmHA is not be considered a party to the contract or incur any liability thereunder. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegated representative will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date _____

Farmers Home Administration

By: _____

Title: _____

(t) *Historic preservation requirements.* The District Director should take the necessary action to assure that the applicant will comply with the provisions of FmHA Instruction 1901-F. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archelological and Historic Preservation Act of 1974 (Pub. L. 93-291), and

Executive Order 11593 dated May 13, 1971.

§§ 1944.216-1944.220 [Reserved]

§ 1944.221 Security.

Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a) and (c) of this section, will be taken on the property purchased or imporved with the loan. A mortgage should be taken on only that part of the land which is necessary to provide adequate security for the loan as determined by the appraisal, except when excess land is purchased as authorized in § 1944.212(c)(3).

(a) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish out units on the site, or when a second initial loan is made to develop units on a contiguous site.

(b) Personal liability will not be required for the members or stockholders of any corporation or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the Promissory Note and Mortgage.

(c) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by an FmHA employee authorized to make real estate appraisals. If the security does not involve more than two rental units, the property will be appraised in accordance with the policies outlined in FmHA Instruction 422.3, available in any FmHA Office. For security involving more than two rental units, the appraisal will be made in accordance with Subpart B of Part 1809 of this chapter (FmHA Instruction 422.2). Form FmHA 426.1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Subpart A of Part 1822 of this chapter (FmHA Instruction 444.1) regarding title clearance and legal services will apply.

(c) *Architectural and Engineering Services.* (1) Housing and related facilities will be planned and developed in accordance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5). The housing will be designed to meet the needs of the types of occupants who will likely occupy it.

(2) A written contract for architectural and engineering services will be required as outlined in Subpart A of Part 1804 of this chapter (FmHA Instruction 424.1).

(d) Construction and development policies. (1) Construction and development will be performed in accordance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5), except that § 1804.5(h)(3)(ii) (paragraph V H 3 b of FmHA Instruction 424.1) will not apply to projects constructed by the owner-builder method. These projects will be governed by the following:

(i) The development cost may include a typical builder's fee. The typical builder's fee may be determined by local investigation and also from HUD data for the area.

(ii) The development cost cannot exceed that which is typical for similar type projects in the area.

(iii) The development cost for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(iv) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(2) In all cases of RRH, loans exceeding $50,000, interim financing for the construction period will be obtained when it is available at reasonable rates and terms in order to preclude the necessity for multiple advances of FmHA loan funds.

(i) The applicant shall provide preliminary evidence concerning the availability of interim financing with the application, or in any event, prior to loan approval.

(ii) FmHA loan funds will be obligated before the applicant proceeds with the final arrangements for interim financing.

(e) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction, zoning, and operation of housing financed with an RRH loan will conform with any applicable laws, ordinances, codes, and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all the applicable laws and statutes pertaining to the operation of a facility in which some of the occupants may require some supervision and central services.

(f) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract when loan funds will be used for these services. All such contracts will be subject to review and approval by FmHA and, therefore, should be submitted to FmHA before execution by the applicant. ContracP20S HhbR&dide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(g) *"How to Bring Rental Housing to Your Own Town" Manual.* Exhibit A may be used as a guide for organization applicants applying for loans to finance projects of substantial size. Extra copies may be obtained from the Finance Office for applicants after preliminary discussions indicate that a loan may be developed. The sample forms included as Exhibits A-1 through A-5 may be adapted for use as state forms so that adequate supplies will be availabe to applicants.

(h) *Technical services by consultant organizations.* Technical services by consultant organizations will be governed by § 1944.212(k).

(i) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant will be responsible for obtaining an option on the parcel to be purchased. Form FmHA 440-34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440-34 is used, it is recommended that a provision be included indicating that the option is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440-35, "Acceptance of Option," or other appropriate form of acceptance completed, signed, and mailed to the seller.

(j) *Use of, and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of

FmHA Instruction 1902–A. Collateral for deposit of funds will be pledged in accordance with § 1902.7 of FmHA Instruction 1902–A. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds could not be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for legally eligible loan purposes.

(k) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or required when appropriate, to obtain liability insurance.

(4) Flood Insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.2).

(l) *Bonding.*

(1) The provisions of Subpart A of Part 1804 of this chapter (FmHA Instruction 424.1) pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds shall be the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the official entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

§§ 1944.223–1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible occupants in need of adequate housing.

(a) *Preapplications.* Preapplication information is used to determine the applicant's eligibility and priority for available funds, and to eliminate any proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all of the additional information and material outlined in Exhibit A–6. Preapplications should be filed in the FmHA County Office, but may also be filed in the District Office.

(b) *Action by the County Office.* The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication form (Form AD–621), Exhibit A–6 to this Subpart, and Form FmHA 449–10, "Applicant's Environmental Impact Evaluation." The County Supervisor may assist applicants as needed in completing Form AD–621 and the information required in Exhibit A–6. Preapplications filed in the County Office will be immediately forwarded to the FmHA District Office. The County Office will inform the applicant that further processing will be handled by the District Office, and will advise the applicant not to prepare or develop an application until notified by FmHA to proceed. An information folder will be established and maintained by the County Office once a preapplication is received.

(c) *Actions by the District Office.* Upon receipt of the preapplication, Form AD–621 and all other required information and material will be thoroughly reviewed by the District Director for completeness, accuracy, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. In the event that the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. In such cases, however, the District Director will send the County Supervisor all of the appropriate information necessary to establish the County Office information file. After the District Director has fully reviewed the preapplication material, has determined that the preapplication is complete and accurate, and has properly assembled the preapplication material in an applicant case file, the District Director will then forward the following to the State Director:

(1) Form AD–621.

(2) All information and material listed in Exhibit A–6.

(3) Original and one copy of Form FmHA 440–46, "Environmental Impact Assessment."

(4) Eligibility determination and recommendations.

(5) Priority recommendations

(d) *Actions by the State Office.* (1) Unless the applicant is an individual or an organization adopting without change the "Articles and Bylaws" prescribed by Exhibits E and F of this subpart or by State Supplements or has received clearance form OGC for the same type financing, the complete preapplication and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State Law and this Subpart.

(2) When the State Director determines it necessary, and for all preapplications in excess of the State Director's approval authority, the preapplication will be sent to the National Office for evaluation, authorization, and instructions. When projects are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary plans and specifications, together with the architectural comments and recommendations of the State Office Architect.

(iii) The information required by § 1944.213(a).

(iv) The comments and recommendations of the District Director.

(v) The comments and recommendations of the State Director.

(3) The State Director, with the assistance, advise, and council of the Multiple Family Housing Coordinator, will review the preapplication information, credit report(s), and the District Director's eligibility determination and recommendations.

(i) When considering authorizing the development of applications for loan funds, the State Director should consider the remaining funds in the State or District, as appropriate, and the amount of time necessary to complete the final applications. At the beginning of each quarter of the fiscal year, all preapplications on hand for which no Form AD–622 has been issued will be ranked according to the priority order established in this subpart. Applications

which obviously cannot be funded within a year of this time, and within 150 percent of the State's or District's allocation, will be given adverse notice through Form AD–622 and advised of their appeal rights in accordance with FmHA Instruction 1900–B. Generally the State Director should not authorize the development of applications for substantially more than 150 percent of the funds available in the State or District.

(ii) Preference in selecting and processing loan requests within the annual allocations, will be based on the priorities indicated and in the order they are listed below:

(A) Projects using FmHA's Rental Assistance (RA) or HUD's Section 8 program.

(B) Projects in areas or communities having a higher percentage of substandard housing. For this purpose FmHA will use the county data provided by the National Office, unless better and more specific data approved by the National Office is available for a particular State.

(C) Projects in areas or communities having the lowest per capita income per household, as published by the Department of Labor, Bureau of Labor Statistics.

(D) Projects which will serve the needs of rural communities located 50 or more miles from a town with a population of 50,000 or more.

(E) Projects having the highest percentage of three or more bedroom units, where the market data indicates a need.

(F) Projects where the applicant is a public body or nonprofit corporation.

(iii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

(4) After completing the review, determining priority, and making a decision concerning selection, the State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information and the exeG4*dA*,*OK*:*y*C *I*al Form FmHA 440–46 to the District Office with authorization for the District Director to prepare and issue Form AD–622, "Notice of Preapplication Review Action."

(5) Form AD–622 will be prepared by the District Director stating the results of the review action. The original will be signed and delivered to the applicant, with a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(i) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered, and will be informed in accordance with FmHA Instruction 1900–B, that they may request a further review of this decision.

(ii) Applicants with preapplications which are favorably considered, but are unable to be selected for further processing within approximately 150 percent of the State Office or District Office allocation of funds, will be notified that their preapplications lack sufficient priority for further consideration at the present time. Applicants should be advised in accordance with FmHA Instruction 1900–B that they may request a further review of this action. In addition, such applicants will be advised against incurring obligations for legal and architectural and engineering work, perfecting interests in land rights, and inviting construction bids or making other commitments which cannot be fulfilled without loan funds, until funds are actually made available.

(iii) When an applicant is notified to proceed with an application, the following paragraphs should be contained on or attached to Form AD–622: "The review action taken by FmHA is based upon representations made in your preapplication presented to FmHA. Any changes in project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant, must be reported to and approved by FmHA in writing. Any changes not approved by FmHA shall be cause of discontinuing processing of the application. This action is not to be considered as loan approval or as a representation of the availability of funds. The loan docket may be completed on the basis of a loan not to exceed the amount shown on Form AD–622. If FmHA makes the loan, the interest rate will be that charged by FmHA at the time of loan approval. If a complete application has not been developed in approvable condition by the date specified on Form AD–622, FmHA reserves the right to discontinue processing the application."

§ 1944.232 Preparation of completed loan docket.

(a) *Information needed.* If the applicant has been requested to file an application, Form AD–625, "Application for Federal Assistance (Short Form)," with the additional forms, materials, and information outlined in Exhibit A–7, will be assembled and submitted to the District Director. An application is not considered complete until all required information has been submitted in a complete and acceptable form.

(b) *District Director's responsibility.* (1) When an applicant is notified to proceed with an application, the District Director should arrange for a preapplication conference with the applicant to provide copies of appropriate Exhibits and forms; furnish guidance necessary for orderly application processing; and initiate a processing checklist, (if one has been adopted for use in the State), for use in establishing a time schedule for completion of docket items. The District Director will confirm decisions made at this conference by letter to the applicant and will provide the applicant a copy of any processing checklist initiated. The original and a copy of the processing checklist initiated. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy retained in the District Office will be kept current as application processing actions are taken. The copy will be periodically updated and routed through the State Office and back to the District Office for use in updating the State Office copy of the checklist.

(2) The District Director will assist the applicant in application assembly and processing, and will work closely with the applicant as the loan docket is being developed. As the application is being processed and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences, and will extend and update any processing checklist initiated in connection with the application.

(3) The District Director will review and check all information and materials furnished by the applicant for completeness, correctness, and adequacy. The District Director will review the applicant's rental market survey in detail, and will determine its completeness and accuracy. A random sampling will be made if necessary to verify the completeness and accuracy of the survey. The proposed site will be inspected and the District Director will consider its overall desirability as well as conformance with the site location requirements of § 1944.215 (q). In addition, the District Director will evaluate the information presented concerning the manner in which the applicant plans to conduct its business and financial affairs, and will comment on the adequateness and appropriateness of the proposed management.

(c) *County Committee certification.* County Committees will not be used to review RRH loan applications.

(d) *Assembly, review, and distribution of complete loan docket items.* Ordinarily, FmHA staff review will proceed as applications are being developed. However, prior to presenting the application to the loan approval official, the District Director will thoroughly examine all items to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The District Director will also set forth the proposed conditions of loan approval.

(1) Prior to presenting the properly assembled application to the approval official, the District Director will provide comments and recommendations, and obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer. The District Director will also obtain the analysis and recommendations of the Multiple Family Housing Coordinator. This analysis will include a review of and recommendations concerning the proposed conditions of loan approval.

(2) Loan docket items will be assembled in the following order for distribution after loan approval:

Form No.	Name of form or document	Total Number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O&3C	
FmHA 440-1	Request for Obligation of Funds	5	O&C	4-O&3C	1
AD-621	Preapplication for Federal Assistance	3	1	2-O&1C	1-C
Exhibit A-6	Information to be Submitted with Preapplication for RRH Loan.	2	O	1-O	1-C
AD 622	Notice of Preapplication Review of Action	4		3-C	1-O
AD 625	Application for Federal Assistance (Short Form)	3	1	2-O&1C	1-O
Exhibit A-7	Information to be Submitted with Application for Federal Assistance (Short Form).	2	O	1-O	1-C
FmHA 400-4	Nondiscrimination Agreement	2	2-O&1C	1-C	1-C
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C
FmHA 400-3 [2]	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Evidence of Legal Authority (copies of citation of specific provisions of State constitution and statutory authority) [2].	2	1	1-O	1-C
FmHA 422-7	Appraisal Report for Multiunit Housing	1		1-O	
FmHA 426-1	Valuation of Buildings	1		1-O	
	Proof of Organization (certified copy of charter or articles of incorporation) [1].	2	1	1-O	1-C
	Certified copies of bylaws or regulations [1]	2	1	1-O	1-C
	List of names and addresses of officers, directors, and members, and membership interest held by each [1].	2	1-O	1-O1-C	1-C
	Certified copy of Loan Resolution [1]	1	1	1-O	
	Loan Agreement or Resolution, if applicable	2	1	1-O	1-C
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction [1].	3	1	1-O	1-C
Exhibit A-5	Operating budget (first year)	2	1	1-C	1-C
Exhibit A-5	Operating budget (typical year)	2	1	1-O	1-O
Exhibit A-5A	Housing Allowances For Utilities and Other Public Services, if applicable.	2	1	1-O	1-C

[1] When applicant is an organization.
[2] One copy for contractor.

Other Loan Docket Items. A preliminary title and a Final Title Opinion or a title insurance binder, a mortgage title insurance policy, and a copy of deed, purchase contract, or other instrument of ownership. When applicable, include copy of lease or lease form to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage.

(e) *Submission of docket to State Office.* When submitting the loan docket to the State Office for the review required in § 1944.232(d)(1), or in those cases where the loan will be approved in the State Office, the docket must be properly completed and assembled, and must contain the comments and recommendations of the District Director. The State Director, with the advise of OGC if requested or needed, will prepare a memorandum to the District Director setting forth the conditions of loan approval, or requesting additional information if the material submitted is inadequate.

(f) *Submission of docket to the National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included.

(g) *Press release.* When it is determined that the loan can be approved, a press release will be prepared in accordance with FmHA Instruction 2015-C. (Available from any FmHA Office.)

§ 1944.233 Loan Approval.

(a) *Authority.* Loans will be approved or disapproved in accordance with this Subpart and FmHA Instruction 1901-A. The State Director may redelegate loan approval authority in writing to State Office employees.

(b) *Loan approval action.* (1) Responsibilities of loan approval official. The loan approval offical is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approval official will determine that:

(i) The applicant is eligible, and has legal authority to contract for a loan and enter into the required agreements.

(ii) The location of the housing meets the requirements outlined in § 1944.215(q).

(iii) The State Director will take necessary action to comply with § 1901.406 of FmHA Instruction 1901-I, on projects of 4 or less units.

(iv) The funds are requested for authorized purposes.

(v) The proposed loan is sound.

(vi) The security is adequate.

(vii) All pre-approval requirements have been met, including the applicant's execution of Form FmHA 400-4.

(viii) All other requirements will be met.

(2) Approval or disapproval of a loan.

(i) Approval. Before the loan approval official executes documents evidencing loan approval, a complete review of the project location and proposed management and rental procedures must be made to assure compliance with Title VI of the Civil Rights Act of 1964. If the loan approval official is assured of compliance after a review of the site location, management and rental procedures and FmHA Instruction 1901-E, the loan approval official may then execute the loan approval documents. When a loan is approved:

(A) The loan approval official will prepare and sign Form FmHA 440-1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station

requesting that loan and/or grant funds for a particular project be obligated.

(B) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440–1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(C) The individual making the request will record the date and time of request and sign Form FmHA 440–1 in section 37.

(D) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time to the extent possible will be processed on the date received; however, there may be instances in which a request will be processed on the next working day.

(E) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds are reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance Office. The Finance Office will mail to the State Offices Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item no. 9 on the FMI for Form FmHA 440–57.

(F) After notification by the finance Office that the funds have been reserved, the original only of Form FmHA 444–5 will be mailed to the Finance Office. Forms FmHA 440–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds, the State Director will call the Information Division in the National Office as required by FmHA Instruction 2015–C. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 440–1 on the obligation date. The State Director or the State Director's designee will record the actual date of application notification on the original of the form as a permanent part of the District Office project filed with a copy in the State Office file.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440–1 will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with (FmHA Instruction 2033–A).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as folows:

(i) To the Finance Office: Form FmHA 444–5 (original). After being processed, an original and copy of Form FmHA 440–57 will be processed distributed by the Finance Office.

(ii) To the State Office: One copy of Forms FmHA 440–1 and FmHA 444–5.

(iii) To the District Office: One copy of Form FmHA 440–1 and the remainder of the loan docket.

(iv) To the National Office: A copy of Form FmHA 444.5.

(4) To OGC: For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent through the State Office to the OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

§ 1944.234 [Reserved]

§ 1944.235 Actions subsequent to loan approval.

(a) *Pre-commitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) Obligation of FmHA loan funds.

(2) Execution by the borrower of the appropriate loan agreement or loan resolution required in accordance with § 1944.215(e).

(3) Obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this chapter (FmHA Instruction 427.1), and § 1944.233(b)(3)(iv) and § 1944.236(a).

(4) Unless initial operating and maintenance capital is included in the loan in accordance with § 1944.212(n), the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(5) The borrower will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Financing during the construction period.* (1) Interim financing. In all cases of RRH loans exceeding $50,000, when it is posssible for funds to be borrowed at reasonable interest rates on an interim basis from commercial or public sources for the construction period, such interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will assume the same responsibilities as if FmHA funds had been advanced from the standpoint of approving construction contracts, supervision of construction, and assuring compliance with applicable equal opportunity, nondiscrimination, and Davis-Bacon Act requirements.

(ii) The FmHA State Director or District Director will deliver a copy of Form FmHA 440–57 to the proposed interim lender as evidence of the FmHA commitment to the applicant. The guide letter shown as Exhibit D of this Subpart will be used by the State Director or District Director to inform a proposed interim lender that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the interim lender is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should be encouraged to limit the disbursements of interim loan funds to 60 percent of the value of acceptable work in place, and in no case may the interim lender be permitted to make

disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213(a)(2) must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds.

(v) A supervised bank account need not be established for funds obtained through interim financing. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payment shall be submitted through the District Director on Form FmHA 424–18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant, and FmHA representative shown on Form FmHA 424–18. For recordkeeping purposes, Form FmHA 402–2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender, and FmHA approved disbursements of interim loan funds.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion the owner's architect engineer must issue a dated and signed statement certifying to substantial completion. The owner's architect/engineer will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness, and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. As evidence of the fact that there are no unpaid obligations outstanding in connection with the project, the applicant will be required to submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer, and attorney indicating that obligations for material, labor, or services have been paid in full, and have been paid in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 424–10, "Release by Claimants" or other similar form may be used for this purpose.

(2) Multiple advances of RRH loan funds. In the event interim financing is not available, and applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In those cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (b)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest, and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ————," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's delegate. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested on Form FmHA 440–57 in accordance with the FMI and it will be forwarded to the Finance Office. As an example, for a loan of $100,000, the advances may be made as follows:

Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	$40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	$20,000
Architectural	1,000
Total	$21,000

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed.

(iii) When the project is substantially complete, final payment to the contractor may be scheduled for disbursement. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect/engineer must issue a dated and signed statement certifying to substantial completion. The Owner's architect/engineer will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed. More than adequate funds to cover the costs associated with correcting or completing the minor items identified will be withheld from the contractor's final payment until full performance.

(iv) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (b)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan to be increased within the same fiscal year but prior to loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed. If it becomes necessary for the amount of the loan to be increased after the fiscal year of the loan obligation has passed, but prior to loan closing, the District Director will process a subsequent loan for the amount of increase. If it becomes

necessary that the amount of the loan be decreased prior to loan closing, the District Director will notify the Finance Office of the decreased loan amount by memorandum. The District Director's memorandum will, at a minimum, contain the following:

(1) The applicant's name.
(2) The applicant's case number.
(3) The fund code.
(4) The nature of the request.
(5) The amount of decrease.
(6) The new amount of loan (after decrease).

(e) *Cancellation of loan.* Loans may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation" in an original and two copies (3 copies if the check is received in the District County Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forwarded to the Finance office after making appropriate adjustments in the records to control loan allocations. A copy or copies of Form FmHA 440–10 will be returned to the District Office.

(2) If the loan check is received in the District Office District Director will return it to the Disbursing Center, U.S. Treasury Department, Post Office box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440–10.

(3) All interested parties will be notified of the cancellation as provided in Part 1801 of this chapter (FmHA Instruction 427.1).

(f) *Handling loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 available in any FmHA office and FmHA Instruction 1902–A.

(g) *Property Insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

§ 1944.236 Loan closing.

(a) *Applicable instructions.* RRH loans will be closed in accordance with applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) and any State Supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions, provided the attorney or title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization provided the cost is in accordance with § 1944.212(k).

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427–1 (State), "Real Estate Mortgage for ———," will be used. For loans to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

"The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

(2) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

"This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (Date), which is hereby incorporated herein by reference."

(3) In case of a loan to an individual where a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

"Occupancy of the housing and related facilities on the property will be limited to eligible occupants as defined in the regulations of the Farmers Home Administration, unless the Government gives prior written approval to other Occupancy."

"As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of Borrower; submit regular and special reports and pertinent to the purpose of the loan or the Government's financial interests; subject rents and charges and other terms of rental agreements with occupants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing shall be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan."

(c) *Promissory note.* (1) Form FmHA 440–16 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instructions for preparation in the FMI for the note will be followed.

(2) The amount to be shown in the note will be the same as shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in Part 1807 of this Chapter (FmHA Instruction 427.1).

(3) Payments on RRH loans will be shceduled on the note in accordance with the FMI. As provided in § 1944.215(c), the principal installments during the first and second years after loan closing may be deferred.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established in accordance with FmHA Instructions 405.1 and 2033–A (available in any office), respectively.

§ 1944.237 Subsequent RRH loans.

A subsequent RRH loan is a loan made to an applicant or borrower to complete or repair the units planned with the initial loan.

§ 1944.238 Coding loans as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan when the total number of units are built or purchased at one place at one time. A subsequent loan will be coded when an additional loan or loans are necessary

to complete or repair the units planned with the initial loan. As an example, the borrower may obtain initial loans for more than one project in the same county, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 440–1, FmHA 440–57, and FmHA 444–5.

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH housing or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, marital status, handicap or national origin should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, D.C. 20250. If a complaint is made to an FmHA county, district, or State office, the complaint should be directed to the Office of Equal Opportunity (USDA–OEO) by the FmHA employee in charge of that office. If the complaint is forwarded to USDA–OEO by a county or district office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA District Office. The complainant should provide the following information:

(1) The name and address (including telephone number) of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA Office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, D.C. 20250.

(c) Accompanying the complaint should be a statement from the District Director or the State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations, (which are found at 7 CFR 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tennants or the community.

The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: Demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§ 1944.241–1944.245 [Reserved]

§ 1944.246 Rural Cooperative Housing Loans Policies, Procedures, and Authorizations.

§§ 1944.247–1944.250 [Reserved]

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Introduction

Most area in rural America need more adequate rental housing. The elderly with modest incomes often live in improvised flats or apartments that are cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Others such as school teachers and the newly married often cannot find suitable rental housings of any kind in the rural community where they work. Other households who prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small towns.

To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations as well as individuals may qualify for loans. Information about these loans is available at the local office of the Farmers Home Administration.

This handbook has been written to assist interested persons and groups in completing an application and obtaining the information required for a loan docket. It also briefly explains requirements regarding the construction and operation of the rental housing.

The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization, or an individual.

The objective of the Rural Rental Housing (RRH) loan program is to provide credit for good rental housing, designed for independent or congregate living, at rental rates that senior citizens, handicapped persons, and other people with low and moderate incomes can afford.

Successful rental housing depends on the existence of three important conditions; namely:

There must be a need for the rental housing to be built.

The housing must fit the needs of prospective occupants from the standpoint of design, location, and cost.

The applicant must provide good management.

An applicant for a loan will need to provide adequate information to FmHA to show that these basic conditions can be met.

Applying for a Loan

An individual, organization, or group organizing for this purpose may apply for an RRH loan to finance rental housing. The

application should be made to the local FmHA County Supervisor, but also may be made to the FmHA District Director serving the area in which the housing is to be located.

The FmHA pamphlet on RRH loans should be read by the applicant before applying for a loan. The applicant also should discuss the proposed housing with the County Supervisor or District Director before completing an application.

Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD–621. Attached or included with the preapplication form should be the supporting material or information listed in Exhibit A–6. Together, this information will enable FmHA to determine:

Eligibility of the applicant,

Feasibility of the proposed housing, and

Whether the proposed housing can appropriately be financed by the FmHA.

This information usually can be furnished by the applicant without formally hiring professional services. It should be factual and specific based on objective investigations and realistic estimates. In addition to the information shown in exhibit A–6, the following paragraphs will provide guidance concerning the subjects that need to be addressed in a preapplication:

1. Identification of the applicant

The name, address, and occupation of an individual applying for an insured RRH loan should be provided. Organizations should attach a certified copy of their charter or articles of incorporation and bylaws, names of members of the board of directors, and a list of names and address of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizer, their proposed percentage interest in ownership, and the type of organization they plan to form.

2. Experience of Applicant in Operating Rental Housing

Describe any experience the applicant has had with rental housing, the location of the housing, and the applicant's duties in connection with the housing.

3. Applicant's Financial Situation

A current, dated, and signed financial statement showing assets and liabilities, together with information on the repayment schedule and status of each debt, must be included in the preapplication. If the applicant is a closely held corporation, a financial statement should be provided by each director and by each member who holds an interest in excess of 10 percent in the corporation.

4. Test for Other Credit

The key to the test for other credit is not merely an applicants inability to obtain credit from other real estate lenders. The key is whether the credit that is available will enable the applicant to rent the rental units to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should contact other lenders making long-term loans for housing in the area in order to determine (a) the amount of the loan the lender is willing to provide, (b) the interest rate and terms at which the loan would be available, and (c) if credit is not available, the reasons why the lender is not willing to extend credit.

5. General Description of the Housing Planned

A brief narrative description of the housing planned would be helpful. It should include the following items:

The type of project and structures proposed, (such as garden apartments for senior citizens and handicapped persons, townhouses for low- and moderate-income persons, or congregate housing for senior citizens and handicapped persons).

The size of each type of living unit measured in square feet of living area.

The total number of units proposed, and the number of each type of living unit proposed.

The type of construction proposed.

The estimated total development cost per unit.

The estimated total development cost of the entire housing project broken down into the following general categories: General construction, electrical, plumbing, heating/cooling, excavating and trenching, site development (including landscaping), land, pro-rated share of any off-site development, interest during construction, architectural/engineering fees, legal and/or closing cost and any other itemized cost.

Schematic design drawings should be included with this narrative description, and should include the proposed plot plan, unit plans, and typical elevation.

6. Applicant's Contribution

Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. In addition, applicants should show the amount of funds available to cover the cost of any furnishings and for initial operating expenses.

7. Location of Housing to be Built

Describe the site and how it is located in relation to services occupants of the housing will require. A map of the community with the site, stores, churches, schools, pharmacies, doctors, and hospitals, is a convenient way to do this. The map also should show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site also should be indicated.

8. Why is the Housing Needed?

An individual, organization or group interested in applying for an RRH loan should investigate the need for more rental housing in the community and become acquainted with families who might be eligible for the kind of rental housing FmHA can finance. The application should include a summary of the information obtained by the applicant to show that there are enough people in the town and its trade area who are eligible to occupy the housing and are willing and able to pay the required rent.

Success of the project will depend on the need for the housing in the community, the rental levels, and the applicant's ability to properly manage the housing. The applicant's basis for conclusion that the proposed rental housing will be successful should be included in a brief statement.

Review of Application

The preapplication and supporting information should be sent to the FmHA County Supervisor. The County Supervisor will forward the preapplication material to the FmHA District Director who in turn will notify the applicant when FmHA reaches a conclusion after it has reviewed the material submitted. If it appears a loan can be made, the District Director will explain to the applicant the additional steps that will be required. In case favorable action cannot be taken on the application, the District Director will explain the reasons and may be able to suggest changes to permit a loan to be made.

Developing the Loan Docket

When authorized to proceed with the loan docket and assemble a complete loan application, the District Director will review with the applicant each of the items listed in Exhibit A–7 with Form AD–625, "Application For Federal Assistance (Short Form)," to complete the docket. The amount of information required will vary based on the complexity and size of the proposed housing project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required. The District Director will assemble this information and complete the docket.

The following are steps which may be followed in developing a loan docket. The first two steps are applicable only to nonprofit organizations. The other steps apply to any applicant.

1. Getting Organized if Applicant is a Nonprofit Organization and Has Not Adopted Articles of Incorporation and Bylaws

Steering Committee. The group may choose a steering committee to act for them. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly and for a reasonable fee.

Articles of Incorporation and Bylaws. FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

Attorney's Fees. Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A–1 for a sample copy of such an agreement.

Board of Directors. The steering committee usually selects the incorporators for the corporation. The board of directors of the corporation is responsible for conducting the corporation's business, including not only

obtaining the loan, but also providing overall management after the housing is completed.

2. Obtaining Broadly Based Membership

A nonprofit corporation applying for a loan must have and maintain a broadly based local membership representing a variety of interests in the community, including leaders in the community. The members may be both individuals and organizations, but each member is limited to one vote.

The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee, and provide assurance that the housing will be a success and the purpose of the loan carried out.

In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance, and adequate community support of the housing project over the expected life of the loan are important.

A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

Number of members required. The number of members required to meet the "broadly based membership" requirement will vary, depending upon such facts as the applicant's experience and financial condition, the size of the housing project, the size of the community, and the ratio of loan to the appraised value of the security. The board of directors with the advice of FmHA should decide the number of members needed to assure their organization of sufficient community support.

Contributions by members. Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. Initial Operating Capital

All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in the loan when the loan is made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. Two percent of the total cost of the proposed project will usually cover the costs of getting the housing started if the applicant does not intend to provide furniture or movable equipment for the units. The actual budget, however, may indicate that more than 2 percent is needed.

4. Analysis of Market to Determine Demand for Rental Housing

Applicants should discuss with the District Director the type of market analysis that will be needed. This will vary with the community and the size of the project. Applicants who are interested in developing larger (10 units or more) projects will have to make a complete market analysis showing the need and demand of rural rental housing in the area. The market analysis will indicate the demand for rental housing from prospective eligible occupants in the town in which the housing will be located and the trade area around it.

Since the intent of the program is to provide adequate housing for the eligible permanent residents of the town, the economic justification for the size of the project and the type of units provided should be based primarily upon the need and demand from eligible prospective occupants who are permanent residents of the town. Demand from the more temporary residents of a town, (such as college students), should be discounted in determining project size. The information needed in a rental market analysis includes:

a. Estimate of number of houses or apartments in the area currently for rent.

b. Characteristics of available rental housing, such as location, quality and size of units, type of building, age of structure, vacancy rate, reasons for vacancies, and rental levels.

c. Characteristics of the eligible occupants, such as single or couples, male or female, size and composition of household, number of senior citizens, number of nonsenior citizens, and number of handicapped.

d. Income and financial condition of the people in the area who would be eligible to occupy the housing as planned.

e. Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial conditions.

f. Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

In order to verify that the information presented in the market analysis is accurate, the applicant may also be requested to conduct a rental market survey to identify the number of tenants the applicant can expect for the kind of housing planned. The rental market survey will involve the identification of individuals who are both elgible to occupy the proposed housing and actually ready and financially able to occupy the proposed rental housing.

To assure full occupancy as soon as the housing is completed, about 50 percent more eligible prospective occupants than the number of units to be built should be identified in the market survey before the loan docket is submitted. Prospective occupants who are temporary residents of the community should not be included in the market survey.

People interested in becoming occupants can be identified by:

Personal solicitation by the applicant.

A public meeting. (The District Director can arrange to have someone from FmHA assist the applicant in conducting the meeting.)

Newspapers, TV and radio. (Coupons that can be clipped from a newspaper and sent to the applicant to indicate interest have been used by some applicants.) The applicant should contact each interested person to find out if he or she would be eligible, willing and able to move into the housing when it is completed. A list of the names of prospective occupants should be maintained in the order in which they indicated their interest. The possibility exists that the list could serve as a preliminary waiting list from which the first occupants of the housing may be selected.

Exhibits A-2, A-3, and A-4 are sample forms which may be modified as necessary by the applicant and used to assist in the assembly of the information for the rental market analysis and the rental market survey.

5. List of Prospective Occupants

In order to assure that the proposed housing will be fully occupied shortly after completion of construction, the applicant should begin developing a waiting list of prospective eligible occupants early in the development of a loan docket. Many of the persons identified in the rental market survey may form the initial nucleus of prospective occupants.

6. Planning to Fit the Market

Planning the housing to fit the market existing in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent living at a cost senior citizens, handicapped persons, and other people with low to moderate incomes can afford. Well planned housing is:

Convenient, attractive, safe, and comfortable.

Easily maintained.

Located where its occupants can have easy access to the goods and services they require for daily living.

Planned to meet the local codes and regulations.

Designed to fit the market for the future as well as the present.

Priced to rent for no more than the prospective occupants believe they can afford.

A word of caution: Do not build more units than needed in the area. Keep the rents down to the level prospective tenants are able and willing to pay. Start with a modest number and if experience demonstrates a need for more units, additional loans to create more rental units can be considered.

The District Director can provide information that will help the applicant in planning the housing, such as suggested design considerations and construction guides.

7. Selecting an Architect

The services of an architect are recommended for all rental housing projects unless they involve only a few units (usually not more than 4), standards type plans are

used, and architectural services are note required by State law. The cost of an architect/engineer registered to perform architectural engineering services in the State may be included in the loan.

Before anything more than schematic drawings are prepared, the Architect/Engineer, the FmHA Architect/Engineer, the applicant and the District Director should arrange a meeting. The purpose of this meeting will be to acquaint the applicant's architect with the purposes of the housing and the requirements of FmHA. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

Objectives of the rental housing program.

Services the architect will be expected to perform.

Agreement between architect and applicant.

Stages at which FmHA should review plans and specifications.

Design requirements that will produce good housing at a reasonable cost.

8. Selecting a Site

The location of the housing is an important part of planning to fit the market. Tenants will require easy access to required services. A desirable residential setting within a rural town is essential. Cost also is important.

The total cost of the site, including the cost of site improvement as well as the price of the land, must be considered. Both may be included in the loan.

Before buying a site, it is essential that the applicant consult with the architect/engineer to determine the suitability of the site for the proposed housing. The structure to be placed on the site must not only take into consideration the need of those that will be occupying it, but also the unique constraints of the site it will be located upon. The applicant should also consult with local authorities with regard to building restrictions, zoning, public utilities, taxes and any proposed public work in the area. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the FmHA District Director.

Loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

9. Plot Plan, Detailed Preliminary Plans and Specifications, and Cost Estimates

The size, complexity and cost of rental housing projects can vary from a duplex unit located on a residential building lot, to a complex of buildings located on a site containing several acres. The applicant is required to provide preliminary plans and specifications in enough detail to enable FmHA officials to determine whether or not the proposed housing will be the kind of rental housing FmHA is authorized to finance. The District Director or other FmHA representative will explain to the applicant and the applicant's architect/engineer the kind of plot plan, preliminary plans, and specifications, cost estimates required for the loan docket. The docket also will contain a detailed trade-item cost breakdown showing such items as: Land, building construction by trades, equipment, utility connections, site improvements, architectural services, interest during construction pro-rated share of any off site improvements, closing costs, and legal services. Items not being financed with loan funds should be shown separately.

The preliminary plans should include a plot plan showing the relationship of the proposed structure with the views from the apartments, the property lines, streets, utility lines, alleys, adjacent structures and their uses. It should also show proposed off-street parking for the occupants and their visitors. Other facilities such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

10. Financial Statement

A current financial statement will be required at the time the loan docket is submitted for approval. Individuals applying for an insured rental housing loan may obtain forms from the District Director to provide their financial statement. The financial statement should show all assets and liabilities in sufficient detail to permit a thorough evaluation of the applicant's financial position. The status of each debt and the repayment terms also should be shown.

11. Budget

The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

This budget should be based on a typical annual operation several years after the loan is made. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes namely it:

Helps determine rental rates.

Indicates financial soundness.

Serves as a guide for paying expenses.

Exhibits A–5 and its accompanying Exhibit 5–A is a sample budget form and utility allowance form.

12. Loan Resolution or Loan Agreement

When the applicant is a corporation, or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement shold be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this docket outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. Management Plan

A detailed management plan will be develped which will outline the basic policies and procedures to be followed, and the duties of the officers and employees.

14. Manager and Caretaker

The success of the housing will depend to a large extent on how well it is managed. A carefully written plan should be developed by the applicant outlining the proposed management of the housing and giving such information as who will be the manager, the manager's age and experience, any management training planned, and other facts about the manager's qualifications.

The manager should be readily available to the tenants.

The manager might be one of the occupants, or a member of the board of directors of a nonprofit corporation. A caretaker may be needed for larger projects to:

Take care of minor repairs,

Mow the lawns and maintain the property, and

Remove garbage and trash.

The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that the job is being done right and the enterprise is being managed successfully.

15. Occupancy Policies

Applicants should review carefully with the District Director the occupancy requirements. Particular attention should be given to the following requirements:

The housing must be open to all eligible occupants regardless of race, color, religion, sex, National origin, or maritial status.

The incomes of tenants must be within the maximum income limits approved by FmHA, except for senior citizens or handicapped occupants of housing financed with insured loans.

Additional guidance concerning occupancy in congregate housing projects can be found in Exhibit A–8 of this handbook.

16. Rules and Regulations

The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

17. Lease

The applicant should develop a form of application for occupancy and lease agreement form. Copies of these forms should be included in the loan docket.

Review of the Complete Docket

When the applicant has developed the information needed to complete the loan docket, the applicant should furnish the information and discuss it with the District Director. Form AD–625, the information and materials listed in Exhibit A–7 plus FmHA forms provided by the District Director become the loan docket.

The District Director will submit this docket to the FmHA State Director for consideration. The State Director will send dockets for large projects to the FmHA National Office in Washington, D.C., for review.

The docket will be reviewed and returned to the District Director. A letter from the State Director will indicate any special

requirements that need to be met before loan approval or loan closing. Complete final plans and specifications and firm trade-item cost estimates will be obtained before the loan can be approved. In some cases competitive bidding will be required to determine actual construction cost. In the case of multiple advances of FmHA loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. At this time the applicant becomes a borrower. The loan funds are disbursed from the bank account as needed, by checks signed jointly by the borrower and the District Director. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

If interim financing is available during the construction period at reasonable rates and terms, FmHA can make a conditional committment to the interim lender that will loan the funds to finance the construction of the project. The committment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay off the interim construction indebtedness. Draws of interim loan funds will be made only as needed, and will require the joint approval of the applicant and the FmHA District Director.

Construction

With the start of construction will come the first physical signs that the housing will become a reality. The construction period, however is a most critical period of time.

1. Starting Construction

Construction should not be started until after the FmHA loan is closed, or until the FmHA committment has been made to the interim lender, as appropriate.

2. Competitive Bidding

Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter received after the loan docket has been reviewed and the loan authorized, will instruct the District Director to have the applicant or the applicant's architect/engineer complete the necessary bid documents.

The applicant and the architect/engineer should select competent contractors to bid on the housing. The architect/engineer should be sure contractors understand the plans and specifications, and other conditions.

If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction the District Director, the applicant and the applicant's architect/engineer will inspect the work. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

3. Construction Without Competitive Bidding.

Where competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract approved by FmHA will be executed by the applicant and the builder. If full architectural services are obtained by the applicant, supervision and inspection of the work will be performed by the architect/engineer staff. The applicant and FmHA will also inspect the construction, and will have sole responsibility for doing this when an architect is not involved. Payment will be made to the contractor in accordance with the terms of the contract.

Open House

The applicant may wish to create interest in the housing and build up the list of prospective occupants by having a dedication ceremony. This will attract attention and reacquaint the people of the locality with what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

Exhibits

The following guides may be used when applicable and, if necessary, adopted to meet needs of application consideration.

Exhibit

A–1. Legal Service Agreement.
A–2. Survey of Existing Rental Housing.
A–3. Rental Housing Survey.
A–4. Rental Housing Survey Summary.
A–5. Statement of Budget, Income, and Expense (excluding depreciation).
A–5(A). Housing Allowance for Utilities and Other Public Services.
A–6. Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan.
A–7. Information to be Submitted with Application for Federal Assistance (Short Form).
A–8. Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence.
A–8(A). Physical Self Maintenance Scale (PSMS).
A–8(B). Instrumental Activities of Daily Living Scale (IADL).
A–8(C). Index of Independence in Activities of Daily Living (ADL).

Legal Services Agreement

Agreement made this ——— day of ———, 19— between the ———, hereinafter called the owners, and ———, hereinafter called the attorney, witnesseth:

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in:

(Town) ———
(County) ———
(State) ———

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3. Review of construction contract, bid-letting procedure, and surety and performance bonds.

4. Examination of real estate titles and preparation, review and recording of deeds and any other instruments.

5. Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

———

———

The fees to be payable in the following manner and at the following times:

———

———

The attorney states and agrees that of the above total fees, ——— represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within — days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this —— day of ———, 19—.
Attorney: ———
Owners: ———

BILLING CODE 3410-07-M

SURVEY OF EXISTING RENTAL HOUSING

Name of town: _____ Date: _____

Listing of dwellings or Apartments for rent	Type of Dwelling or Aparment	Number of Bedrooms	Age of Unit	Is it Modern		Central Heat		Is it Occupied		If vacant State No. of months	Monthly rental	Quality	Location
				Yes	No	Yes	No	Yes	No			Good Fair Poor	Good Fair Poor

BILLING CODE 3410-07-C

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Exhibit A - 2

Exhibit A–3

Rental Housing Survey

A rental housing project is being planned for this community. The project would provide comfortable listing at reasonable rental rates. Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–62 [ ] Under 50 [ ]

2. Marital status: Married [ ] Single (including divorced or widowed) [ ]

3. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? Yes [ ] No [ ]

4. Number of person in your household:

1 or 2 [ ]
2 to 4 [ ]
4 to 6 [ ]
6 to 8 [ ]
Over 8 [ ]

5. Annual income from all sources (including any social security, retirement pension, payments made on behalf of minor children, public assistance, etc.):

Less than $3,410 [ ]
$3,410–$4,925 [ ]
$4,925–$6,440 [ ]
$6,440–$7,960 [ ]
$7,960–$9,475 [ ]
$9,475–$10,990 [ ]
$10,990–12,505 [ ]
$12,505–14,020 [ ]
$14,020–$15,540 [ ]
$15,540–17,005 [ ]
Over $17,055 [ ]

6. Do you own ( ) or rent ( ) present residence?

If you rent, what is your present rental rate?———

7. Do you live in house ( ) Apartment ( ) Room ( ) On a farm ( ) In town ( )

8. Is your present housing modern ( ) Not modern, but adequate ( ) Inadequate ( ) If so, in what respect?———

What amount of monthly rent can you pay if utilities are included?

Less than $55 [ ];
$55–85 [ ];
$85–115 [ ];
$115–145 [ ];
$145–175 [ ];
$175–205 [ ];
$205–235 [ ];
$235–265 [ ];
$265–295 [ ];
$295–325 [ ];
Over $325 [ ].

10. Would you want to maintain own yard ( ) Flower garden ( )

11. Would you be willing to move in if apartment was available ———, 19—? Yes ( ) No ( )

12. Name ———
Address ———
Telephone Number ———

13. Number of meals you would prefer to be prepared per day?—

14. What other services would you like to have available to you?

	Yes ( )	No ( )
a. Housekeeping Services?		
b. Personal care services?		
c. Social and recreational activities services?		
d. Linen and laundry services?		
e. Health and medical related services?		
f. Beauty and barber services?		
g. Transportation or access services?		
h. Other (Specify)———		

15. Type of building preferred:

1-story
2-story
More than 2-storys

16. List any hobbies or organizational membership you have.

BILLING CODE 3410-07-M

Exhibit A-4
Page 1

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household		
	62 or over	50 to 62	Under 50
Marital Status:			
Married			
Single			
Handicapped:			
Yes			
No			
Household Size (Bedrooms Needed)			
1 or 2 persons (1 bedroom)			
2 to 4 persons (2 bedrooms)			
4 to 6 persons (3 bedrooms)			
6 to 8 persons (4 bedrooms)			
Annual Income:			
Less than $3,410			
$3,420 - 4,925			
$4,925 - 6,440			
$6,440 - 7,960			
$7,960 - 9,475			
$9,475 - 10,990			
$10,990 - 12,505			
$12,505 - 14,020			
$14,020 - 15,537			
$15,537 - 17,053			
Over $17,053			
Present Housing:			
House			
Apartment			
Room			
Rent			
Own			
Modern			
Not modern, but adequate			
Inadequate			

Exhibit A-4
Page 2

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household		
	62 or over	50 to 62	Under 50
Rent:			
Less than $55			
$55-85			
$85-115			
$115-145			
$145-175			
$175-205			
$205-235			
$235-265			
$265-295			
$295-325			
Over $325			
Willing to move into Housing when completed:			
Yes			
No			

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RENTAL HOUSING SURVEY GRAPHICAL DISPLAY

Annual Income
(Adjusted Annual Income with 2 minors)

Rent Willing To Pay	Less than $3,410 ($2,640)	$3,410 - 4,925 ($2,640 - 4,080)	$4,925 - 6,440 ($4,080 - 5,520)	$6,440 - 7,960 ($5,520 - 6,960)	$7,960 - 9,475 ($6,960 - 8,400)	$9,475 - 10,990 ($8,400 - 9,840)	$10,990-12,505 ($9,840-11,280)	$12,505-14,020 ($11,280-12,720)	$14,020-15,540 ($12,720-14,160)	$15,540-17,055 ($14,160-15,600)	Over $17,055 ($15,600)
Less than $55											
$55-85											
$85-115											
$115-145											
$145-175											
$175-205											
$205-235											
$235-265											
$265-295											
$295-325											
Over $325											

1. Respondents falling below and to the left of the heavy line could perhaps benefit from FmHA rental Assistance or HUD Section 8 since they are willing to pay more than 25 percent of their adjusted monthly income for the costs of rent and utilities.

2. Respondents, in the middle boxes would be willing to pay 25 percent of their adjusted monthly income for the costs of rent and utilities.

3. Respondents above and to the right of the diagonal boxes are not willing to pay 25 percent of their adjusted months income for the cost of rent and utilities.

4. Respondents in the right column are not likely eligible for occupancy.

Exhibit A-5

STATEMENT OF BUDGET, INCOME, AND EXPENSE (Excluding Depreciation)

Name of Borrower _____
Address _____
Project Location _____
Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount $ _____

No. & Kind	Per Month Basic	Per Month Mkt.	Budget(prior yr.) Basic (interim yr.) or Mkt. (interim) Beg / End (1)	Actual(prior yr.) Basic Rent Budget Beg / End (2)	Basic Rent Budget Beg / End (3)	Market Rent Budget Beg / End (4)
Income From Rent						
1 _____ units @						
2 _____ units @						
3 _____ units @						
4 _____ units @						
5 Less Allowance for Vacancy and Contingencies as Authorized by FmHA			( )	( )	( )	( )
6 Total Income from Rent						
Other Income						
7 Laundry						
8 Interest Income						
9 Other (specify)						
10 Total Other Income (Add Lines 7 through 9)						
11 Total Income (Add Lines 6 and 10)						
12 Total Operation, Maintenance and other Expenses						
13 Net Income (Loss) (excluding depreciation) (Line 11 less Line 12)						
Other Deductions						
14 FmHA Payment						
15 Transfer to Reserve						
16 Return to Owner $ _____ @ _____ %						
17 Authorized Capital Imp.						
18 Other Authorized Debt Payments						
19 Other (specify)						
20 Total Other Deductions (Add Lines 14 thru 19)						
21 Excess (Deficit) (Line 13 Less Line 20)						

Certified Correct

_____ by _____
(date) Borrowers or Borrower's Representative Signature

APPROVED BY FARMERS HOME ADMINISTRATION:

Name	Title	Signature	Date

Exhibit A-5
Page 2

OPERATION AND MAINTENANCE EXPENSES:	(1)	(2)	(3)	(4)
1. Salaries and Wages	$	$	$	$
Caretaker	$	$	$	$
Manager				
2. Utilities				
Water	$	$	$	$
Sewer	$	$	$	$
Gas	$	$	$	$
Electricity	$	$	$	$
Heating	$	$	$	$
Garbage and Trash Removal	$	$	$	$
Telephone	$	$	$	$
Other _____	$	$	$	$
3. Maintenance	$	$	$	$
Janitor's Supplies	$	$	$	$
Repairs	$	$	$	$
Building Equipment Repairs	$	$	$	$
Exterminating	$	$	$	$
Decorating	$	$	$	$
Grounds Maintenance				
Furniture & Furnishings Replacements	$	$	$	$
Other _____	$	$	$	$
4. Insurance				
Fire and Extended Coverage	$	$	$	$
Liability	$	$	$	$
Compensation	$	$	$	$
Other _____	$	$	$	$
5. Taxes				
Real Estate	$	$	$	$
Social Security	$	$	$	$
Special Assessments	$	$	$	$
Income	$	$	$	$
Other _____	$	$	$	$
6. Other Expenses				
Accounting	$	$	$	$
Legal	$	$	$	$
Advertising	$	$	$	$
Interest (not included in Line 14)	$	$	$	$
Other _____	$	$	$	$
7. Total Operation and Maintenance Expenses (Add Section 1 thru 6) (Total to line 12 Front Side)	$	$	$	$

INSTRUCTION FOR PREPARATION

(1) When used by loan applicant.

(a) Column (1) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for the interim or partial year.

(b) Column (2) will be completed to reflect the proposed market rent budget for the interim or partial year.

(c) Column (3) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for a full 12 months of operation (typical year).

(d) Column (4) will be completed to reflect the proposed market rent budget for a full 12 months of operation (typical year).

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Exhibit A-5A
Page 1

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

NAME OF BORROWER

LOCATION AND IDENTIFICATION OF PROJECT

Part I

UTILITY OR SERVICE	Monthly Dollar Allowances					
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
HEATING						
a. Natural Gas						
b. Bottle Gas						
c. Oil						
d. Electric						
AIR CONDITIONING						
COOKING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.						
WATER HEATING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
d. Oil						
WATER						
SEWER						
TRASH COLLECTION						
OTHER (Specify)						
TOTAL ALLOWANCE (Round to next highest dollar)						

PREPARED BY: _____

Borrower or Agent Title Signature Date

APPROVED BY FARMERS HOME ADMINISTRATION

_____

Name Title Signature Date

Exhibit A-5A
Page 2

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

PART II

BLOCK A	BLOCK B
TO: _____ Name of Tenant	ALLOWANCE FOR UTILITIES AND SERVICES BILLED DIRECTLY TO AND PAID BY TENANT — Per Month
Address of Tenant	Heating..... $ _____
No. of Bedrooms _____	Air Conditioning..... _____
You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payments of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities.	Cooking..... _____
	Other Electric..... _____
	Water Heating..... _____
	Water..... _____
	Sewer..... _____
	Trash Collection..... _____
	Other (Specify)..... _____
	_____..... _____
_____ Signature of Borrower or Agent	TOTAL (Round to next highest dollar) $ _____
_____ Date	

BILLING CODE 3410-07-C

Instructions for Preparation and Use of Housing Allowances for Utilities and Other Public Services

I *General.* These instructions are for completing Exhibit A–5A for the establishment and use of approved utility allowances for tenants. The objective shall be to establish allowances at levels that will apply to the majority of the household assigned to the proper size unit.

II *Determining Allowances.*

A *Existing Construction.* The borrower shall provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases shall be used to estimate utility allowances. The following local sources should be contacted as appropriate:

1 Electric utility suppliers
2 Natural gas utility suppliers
3 Water and sewer suppliers
4 Fuel oil and bottle gas suppliers
5 Public service commissions
6 Real estate and property management firms
7 State and local agencies including public housing authorities

In those cases where a project utilizes a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors shall be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit:	*Factor*
0–BR	0.5
1–BR	0.7
2–BR	0.9
3–BR	1.1
4–BR	1.4
5–BR	1.6

Example: An eightplex structure containing four one-bedroom apartments and four two-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated thus:

Four (one-bedroom) @ .7 = 2.8
Four (two-bedroom) @ .9 = 3.6
Total 6.4

$$\frac{\text{total use}}{\text{total of factors}} \times \text{cost per kilowatt-hour (kwh)—average billing (assume \$.04 per kwh)}$$

$$\frac{42{,}000}{6.4} \times .04 = 262.50$$

$$\text{unit factor} \times \text{average billing} = \text{unit allowance}$$

(one bedroom) $.7 \times 262.50 = \$183.75$/yr.

(two bedroom) $.9 \times 262.50 = \$236.25$/yr.

B. *New Construction.* The applicant with assistance from the applicant's architect, mechanical engineer or other heating and cooling system specialists shall provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs shall be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments" or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. *Type of Allowances.* 1. Separate heating and cooling allowances shall be established for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether tenants will have responsibilities for lawn care.

2. Allowances for air-conditioning shall be established only for those projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity the rates used for lighting, refrigeration, and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating, and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. *Preparation By Borrower or Applicant.*

A. *Applicable Projects.* Except for projects operating on a profit basis, Exhibit A–5A will be completed in the original and three copies in all instances where the tenants pay utilities or authorized services directly. Where the borrower pays all utilities, Part I of Exhibit A–5A may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowance shall be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Back-up data and necessary documentation should be included with the submission.

B. *Submission of Supporting Data to FmHA.* The applicant will submit to FmHA adequate data to justify the utility allowance for the project. The data will include the following:

1. Completed Exhibit A–5A.
2. List of local sources contacted for information and copies of any data provided by such sources.
3. Any data on allowances already established for the area.
4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA.* If FmHA finds the allowances acceptable, the approval portion of Part I will be completed on all copies and the original and one copy returned to the District Director. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent Action by Borrower.* After approval by FmHA the borrower will complete Part II of the form and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each of the utilities and services which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A–5A need not be attached to the lease.

Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–621, "Preapplication For Federal Assistance":

1. *Eligibility.* a. Financial Statement—Each applicant must submit a current, dated, and signed financial statement, showing assets and liabilities, with information on the status and repayment of each debt. If the applicant is a corporation other than a non profit corporation or a trust, a current financial statement will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent. A dated and signed financial statement will be required of all general partners or trustees who hold an interest in a partnership or trust. A dated and signed certificate is required of each limit partner in a limited partnership, certifying to the

approximate net worth of the limited partner. In any case which a financial statement is required from an individual, it will also include the financial interests and signature of the spouse. The applicant must have initial operating capital and other assets needed for a sound loan. The initial operating capital required will amount to at least 2 percent of the total cost of the project to cover these costs. Loan funds may be included in the loan to pay the initial operating expense up to 2 percent of the development cost for nonprofit organizations and State and local public agencies. The applicant must also possess sufficient cash or land to meet any equity or development requirements. If the applicant is an organization which has not been formed at the time of filing the preapplication, the financial statements for the proposed general partners, stockholders, members, or beneficiaries must collectively (and in proportion to the proposed ownership interest of each) reflect sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirement of the applicant organization. Prior to loan approval, however, the applicant must be legally organized and must submit a financial statement meeting these requirements. All financial statements and certificates approximate net worth submitted in fulfillment of these requirements must contain the following statement immediately preceding the signature line:

"(I) or (we) certify the above and the statements contained herein are a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part."

b. Evidence Concerning the Test for Other Credit—Applicants other than State or local public agencies are responsible for showing not only that they are credit worthy, but that other credit is not available at rates and terms that will enable the rental units to be rented to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should provide letter from other local real estate lenders evidencing the amount of loan funds they are willing to extend, the rates and terms at which the loans would be available, and if credit is not available, the reasons why other lenders are not willing to extend credit.

c. Statement of applicant's experience in operating rental housing and related business—with a statement on the proposed method of operation and management.

d. For an Organization Applicant—A copy of or an accurate citation to the specific provisions of State law under which the applicant is or is to be organized; a certified copy of the applicant's actual or a copy of the applicant's proposed charter, Articles of Incorporation, Bylaws, partnership agreement, certificate of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors, and officers; and if a member of subsidiary of another organization, its name, address, and principal business, if available.

e. A written, dated, and signed statement from the applicant stating the following:

"(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider an identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders, or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part; (3) when any officer, director, stockholder, or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services, or interim financing other than those of a survey, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interium lender, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part."

2. *Need and Demand:* a. A realistic estimate of need and demand for the number of living units of the type proposed, based on the availability of rental housing and the number of eligible tenants living in the community and its trade area willing and able to pay the proposed rental rates. Applicants for loans to provide congregate housing with central dining area or space for support services including housing involving a group living arrangement, must furnish a narrative statement from local, State, and government agencies supporting the current and long-range need for such facilities by the handicapped in the community and its trade area.

b. A schedule of proposed rental rates, and in the care of congregate housing proposal, a separate schedule listing the proposed cost of any non-shelter services to be provided.

3. *Site:* a. Size of tract, and a plat map identifying its boundaries.

b. A map showing the location and other supporting information on its neighborhood and existing facilities, such as distance to shopping area, neighborhood churches, schools, available transportation, drainage, sanitation facilities, water supply, and access to essential services such as doctors, dentists, pharmacies, and hospitals.

c. A copy of the applicant's deed or option to purchase.

4. *General Description of the Housing Planned* including the following:

a. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevation. If available, the proposed preliminary drawings and specifications may be submitted.

b. Type of construction.

c. Summary of the estimated total development cost of the entire project, separately identifying the cost (or value in the case of land owned by the applicant) associated with the following items of development: General construction, electrical, plumbing, heating/cooling, excavating and trenching, site development (including landscaping), land, pro-rated share of any off-site development, interest during construction, architectural/engineering fees, legal and/or closing costs, and any other itemized costs.

d. The total number of living units and the number of each type of living unit proposed.

e. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

f. Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

Exhibit A-7.—Information To Be Submitted With Application for Federal Assistance (Short Form)

The following information is to be submitted with Form AD-625, "Application for Federal Assistance (Short Form)":

1. A plot plan, detailed preliminary plans and specifications and any special design features for senior citizens or handicapped persons.

2. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances, or regulations.

5. A market survey report which should be based on the number of eligible occupants in the area who are willing and financially able to occupy the housing at the proposed rental levels. The economic justification for the

housing and the size of the project should be based primarily upon the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area. Permanent residents include those eligible residents of the community that are civilian employees or military personnel of any military installation that may be located within the trade area of the community. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, demand from the more temporary residents of a community (such as college students in a college town) should be discounted in determining project size. A market survey report will include:

a. For a proposed project which will contain 10 or fewer units and will be in a community where an effective demand for rental housing obviously exists, statements supported by statistical data describing and explaining the basis for expecting a continued effective demand for the rural rental housing over the period of the loan. Such information may be assembled from census reports, county market evaluations made by the Department of Housing and Urban Development and other published data that shows the number of occupants living in the town or trade area who are eligible to occupy the proposed housing and the condition of the housing they occupy. This information will be used to help determine the maximum number of rental units that may be financed.

b. For a proposed project that will include more than 10 units and for any smaller project where there is any doubt concerning the demand, a complete rental housing market analysis showing the need and demand for rural rental housing in the area based on the best information available. It will include:

(1) An estimate of number of houses or apartments in the area for rent or sale. Exhibit A–2 or a similar form should be used for this purpose.

(2) Characteristics of available rental housing such as location, quality and size of unit, type of building, age of structure, house value, tenure, vacancy rate, nature of vacancies, and price or rental levels.

(3) Characteristics of the persons eligible for occupancy of the proposed housing, such as single or couple, size of household, number of senior citizens, nonsenior citizens or handicapped persons, and income financial condition.

(4) Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial reasons.

(5) Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

(6) In the case of a proposal involving congregate housing, with central dining area, space for support services, or housing involving a group living arrangement, a narrative statement from local, State, and/or Federal Government agencies supporting the current and long-range need for such facilities in the community and its trade area.

c. If the housing is located in an area where there are relatively few eligible occupants, or for any other reason there is a question as to whether the housing will be fully occupied, signed expressions of interest in occupancy from a sufficient number of eligible occupants will be obtained so as to clearly indicate that full occupancy will occur soon after construction is completed. Exhibit A–3 or a similar form may be used for this purpose.

d. The applicant will provide a written, signed certification that the information provided in the market study is true and accurate.

6. A current dated and signed financial statement showing the debt structure of the applicant. (See item 1a of Exhibit A–6)

7. Detailed operating budgets, showing a schedule of proposed rental rates, for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments, and permit accumulation of required reserves. Exhibits A–5 and A–5A or similar forms may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent, and contingency expense. Projects being developed utilizing HUD's Section 8 Housing Assistance Payments program for new construction may use a lower rate; however, in no case should the allowance be less than 5 percent. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of one percent per annum of the value of the buildings and related facilities financed wholly or partially with the loan until a reserve equal to 10 percent of their value is reached. Budgets should not include an additional item for depreciation since the purpose of a reserve percent is to provide funds for this purpose.

c. All applicable taxes, including Federal and any State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles or incorporation and bylaws conform to Exhibits E and F of Subpart E, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the District Office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501 (c)([4) of the Internal Revenue Code.

8. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

9. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent a copy of the proposed management agreement should be submitted. It must contain the clause indicating that it is not in full force and effect and until approved by FmHA.

10. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project. An acceptable management plan should be responsive in depth to each of the following applicable areas: (a) The role and responsibility of the owner, and the owner's relations and delegations of authority to the managment agency; (b) personnel policy and staffing requirements (including the duties and responsibilities of the owner, management agency, and each staff person or employee; (c) plans and procedures for marketing units, and for achieving and maintaining full occupancy; (d) procedures for determining and verifying tenant eligibility, selecting tenants (including any tenant priorities in a congregate housing project), and for certifying and recertifying tenant eligibility and income; (e) plans for carrying out an effective maintenance and repair program; (f) rent collection policies and procedures; (g) program for maintenance of adequate accounting records and handling necessary forms and vouchers; (h) plans for resident-management relations; (i) plans for meeting social and economic problems of the residents on an ongoing basis (including any non-shelter services to be provided in a congregate housing project); and (j) plans for security measures. In addition, attached to the management plan should be a copy of the proposed application for admission, waiting lists, lease or rental agreement, and rules and regulations governing administration and occupancy.

11. A schedule of any separate changes for the use of any related facilities, and in the case of congregate housing, a schedule of any separate charges for non-shelter services (such as meals, personal care, and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

12. When land is being purchased or a building site will be part of a tract owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

13. An affirmative fair housing market plan on Form HUD 935.2 or the applicant must provide evidence of being a signatory to a voluntary affirmative marketing agreement

approved by the Department of Housing and Urban Development. (See FmHA Instruction 1901–E, specifically § 1901.203.) The affirmative fair housing marketing plan must be prepared in a complete, meaningful, responsive, and detailed manner.

Exhibit A–8.—Objective Guides To Assist Management in Determining the Ability of Tenants To Sustain Relative Independence

In providing housing for senior citizens and handicapped persons, especially when that housing is provided in the form of congregate housing or housing involving group living arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well meaning management might be in trying to provide housing or those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a smiliar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as those who are able to sustain relative independence given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more *dependent* on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project management to assess the tenant's ability to remain independent with an assist from the sevices provided in the project.

In addition, there are several other more technical and scientifically developed scales of competence that can be used by *the project management* to assess a tenant's capacity for personal care, capacity for continued living in the housing project, or competence in the activities of daily living. The Physical Self Maintenance Scale (Exhibit A–8A) may be used by project management to measure a person's capacity for personal care. The Instrumental Activities of Daily Living Scale (Exhibit A–8B) may be used by project management to measure a person's capacity for continual living in the "community" of the housing project and the Index of Independence Activities of Daily Living (Exhibit A–8C) may be used by project management to measure the relationship of functional capacity to the accomplishment of daily activities. These scales should be used by project management only when absolutely necessary.

It is extremely important that project management understand that these scales are tools available for *use by the management* and *not for the use of or completion by tenants or prospective tenants.* Project managers may gather the information necessary to complete any one of these scales of competence through a variety of methods, including tactful interviews or conversations with the tenants, friends or relatives, or by any other appropriate means. Under no circumstances, however, it is appropriate to give the scale to a tenant or prospective tenant to complete, or to read it to a tenant or prospective tenant as a questionnaire would be. Assessments must be made by project managers in such a way that tenants and prospective tenants are not made to feel humiliated, degraded or embarrassed in the process.

Exhibit A–8A

Physical Self Maintenance Scale (PSMS)

Name _____
Rated by _____
Date _____

A. Toilet

1. Cares for self at toilet completely, no incontinence.
2. Needs to be reminded or needs help in cleaning self, or has rare (weekly at most) accidents.
3. Soiling or wetting while asleep more than once a week.
4. Soiling or wetting while awake more than once a week.
5. No control of bowels or bladder.

B. Feeding

1. Eats without assistance.
2. Eats with minor assistance at meal times and/or with special preparation of food, or help in cleaning up after meals.
3. Feeds self with moderate assistance and is untidy.
4. Requires extensive assistance for all meals.
5. Does not feed self at all and resists efforts of other to feed.

C. Dressing

1. Dresses, undresses and selects clothes from own wardrobe
2. Dresses and undresses self, with minor assistance.
3. Needs moderate assistance in dressing or selection of clothes.
4. Needs major assistance in dressing, but cooperates with efforts of others to help.
5. Completely unable to dress self and resists efforts of others to help.

D. Grooming (Neatness, Hair, Nails, Hands, Face, Clothing)

1. Always neatly dressed, well-groomed, without assistance.
2. Grooms self adequately with occasional minor assistance, e.g. shaving.
3. Needs moderate and regular assistance or supervision in grooming.
4. Needs total grooming care, but can remain well-groomed after help from others.
5. Actively negates all efforts of others to maintain grooming.

E. Physical Ambulation

1. Goes about grounds or city.
2. Ambulates within residence or about one block distant.
e. wheelchair——
3. Ambulates with assistance of (check one)
a. another person——
b. railing——
c. cane——
d. walker——
1. ——gets in and out without help.
2. ——needs help in getting in and out.
4. Sits unsupported in chair or wheelchair, but cannot propel self without help.
5. Bedridden more than half the time.

F. Bathing

1. Bathes self (tub, shower, sponge bath) without help.
2. Bathes self with help in getting in and out of tub.
3. Washes face and hands only, but cannot bathe rest of body.
4. Does not wash self but is cooperative with those who bathe.
5. Does not try to wash self, and resists efforts to keep clean.

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Exhibit A–8B

Instrumental Activities of Daily Living Scale (IADL)

Name _____
Rated by _____
Date _____

A. Ability To Use Telephone

1. Operates telephone on own initiative—looks up and dials numbers, etc.
2. Dials a few well-known numbers.
3. Answers telephone but does not dial.
4. Does not use telephone at all.

B. Shopping

1. Takes care of all shopping needs independently.
2. Shops independently for small purchases.
3. Needs to be accompanied on any shopping trip.
4. Completely unable to shop.

C. Food Preparation

1. Plans, prepares and serves adequate meals independently.
2. Prepares adequate meals if supplied with ingredients.
3. Heats and serves prepared meals, or prepares meals but does not maintain adequate diet.
4. Needs to have meals prepared and served.

D. Housekeeping

1. Maintains house alone or with occasional assistance (e.g. "heavy work-domestic help").
2. Performs light daily tasks such as dish-washing, bed-making.

3. Performs light daily tasks but cannot maintain acceptable level of cleanliness.
4. Needs help with all home maintenance tasks.
5. Does not participate in any housekeeping tasks.

E. Laundry

1. Does personal laundry completely.
2. Launders small items—rinses socks, stockings, etc.
3. All laundry must be done by others.

F. Mode of Transportation

1. Travels independently on public transportation or drives own car.
2. Arranges own travel via taxi, but does not otherwise use public transportation.
3. Travels on public transportation when assisted or accompanied by another.
4. Travel limited to taxi or automobile with assistance of another.
5. Does not travel at all.

G. Responsibility for Own Medication

1. Is responsible for taking medication in correct dosages at correct time.
2. Takes responsibility if medication is prepared in advance in separate dosages.
3. Is not capable of dispensing own medication.

H. Ability To Handle Finances

1. Manages financial matters independently (budgets, writes checks, pays rent and bills, goes to the bank), collect and keep track of income.
2. Manages day-to-day purchases, but needs help with banking, major purchases, etc.
3. Incapable of handling money.

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Exhibit A-8C.—Index of Independence in Activities of Daily Living Scale (ADL)

Table 1. Evaluation Form

Name _____
Day of evaluation _____

For each area of functioning listed below, check description that applies. (The word "assistance" means supervision, direction, or personal assistance).

Bathing—Either Sponge Bath, Tub Bath, or Shower

☐ Receives no assistance (gets in and out of tub by self if tub isd usual means of bathing).
☐ Receives assistance in bathing only one part of the body (such as back or a leg).
☐ Receives assistance in bathing more than one part of the body or not bathed.

Dressing—Gets Clothes From Closets and Drawers—Including Underclothes, Outer Garments and Using Fasteners (Including Braces if Worn)

☐ Gets clothes and gets completely dressed without assistance.
☐ Gets clothes and gets dressed without assistance except for assistance in tying shoes.
☐ Receives assistance in getting clothes or in getting dressed or stays partly or completely undressed.

Toileting—Going to the "Toilet Room" for Bowel and Urine Elimination; Cleaning After Elimination and Arranging Clothes

☐ Goes to "toilet room," cleans self and arranges clothes without assistance (may use object for support such as cane, walker, or wheelchair and may manage night bedpan or commode emptying same in morning).
☐ Receives assistance in going to "toilet room" or in cleaning self or in arranging clothes after elimination or in use of night bedpan or commode.
☐ Doesn't go to room termed "toilet" for the elimination process.

Transfer

☐ Moves in and out of bed as well as in and out of chair without assistance (may be using object for support such as cane or walker.)
☐ Moves in and out of bed or chair with assistance.
☐ Doesn't get out of bed.

Continence

☐ Controls urination and bowel movement completely by self.
☐ Has occasional "accidents".
☐ Supervision helps keep urine or bowel control: catheter is used, or is incontinent.

Feeding

☐ Feeds self without assistance.
☐ Feeds self except for getting assistance in cutting or buttering bread.
☐ Receives assistance in feeding or is fed partly or completely by using tubes or intravenous fluids.

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Table 2. Index of Independence in Activities of Daily Living

The Index of Independence in Activities of Daily Living is based on an evaluation of the functional independence or dependence of persons in bathing, dressing, going to toilet, transferring, continence, and feeding. Specific definitions of functional independence and dependence appear below the index.

A—Independent in feeding, continence, transferring, going to toilet, dressing and bathing.

B—Independent in all but one of these functions.

C—Independent in all but bathing and one additional function.

D—Independent in all but bathing, dressing, and one additional function.

E—Independent in all but bathing, dressing, going to toilet, and one additional function.

F—Independent in all but bathing, dressing, going to toilet, transferring and one additional function.

G—Dependent in all six functions.

Other—Dependent in at least two functions, but not classified as C, D, E or F.

Independence means without supervision, direction, or active personal assistance, except as specifically noted below. This is based on actual status and not on ability. A person who refuses to perform a function is considered as not performing the function, even though the person is deemed able.

Bathing (Sponge, Shower or Tub)

Independent: Assistance only in bathing a single part (as back or disabled extremity) or bathes self completely.

Dependent: Assistance in bathing more than one part of body; assistance in getting in or out of tub or does not bath self.

Transfer

Independent: Moves in and out of bed independently and moves in and out of chair independently (may or may not be using mechanical supports).

Dependent: Assistance in moving in or out of bed and/or chair; does not perform one or more transfers.

Dressing

Independent: Gets clothes from closets and drawers; puts on clothes, outer garments, braces; manages fasteners; act of tying shoes is excluded.

Dependent: Does not dress self or remains partly undressed.

Going to Toilet

Independent: Gets to toilet; gets on and off toilet; arranges clothes; cleans organs of excretion; (may manage own bedpan used at night only and may or may not be using mechanical supports).

Dependent: Uses bedpan or commode or receives assistance in getting to and using toilet.

Continence

Independent: Urination and defecation entirely self-controlled.

Dependent: Partial or total incontinence in urination or defecation; partial or total control by enemas, catheters, or regulated use of urinals and/or bedpans.

Feeding

Independent: Gets food from plate or its equivalent into mouth; (precutting of meat and preparation of food, such as buttering bread, are excluded from evaluation).

Dependent: Assistance in act of feeding (see above); Does not eat at all or parenteral feeding.

The Index of ADL

The Index of ADL summarizes overall performance in six functions, namely, bathing, dressing, going to toilet, transferring, continence and feeding. According to the Index, performance is summarized as grades A, B, C, D, E, F, or G, where A is the most independent grade relative to the scale and G the most dependent grade.

By means of a series of questions and observations, the observer forms a mental picture of the person's ADL status as it existed during a 2-week period preceding the evaluation. The observer determines whether another person assisted the person evaluated or whether the person being evaluated functioned alone, defining assistance and active personal assistance, directive assistance, or supervision. The actual existence of such assistance is considered in the evaluation, not the potential or ability of the person being evaluated. Thus, for

example, overprotective assistance is defined as assistance although the observer considers the person as more able; and refusal to perform a function is considered nonfunctioning although the person is deemed able. The observer uses the following definitions in completing the form reproduced in Table 1 and records, for each function, the most dependent degree of performance during the 2-week

Bathing is the overall complex behavior of getting water and cleansing the whole body. A person receives "no assistance" (first of the three classes of bathing in Table 1) if no other person is involved in any part of the process of taking a sponge, shower, or tub bath to wash the whole body. Such a person goes to the sink unaided if the person sponge-bathes at the sink, gets in and out of a tub unaided if the person tub-bathes, and is not supervised in the shower if showering is the means of bathing. A person receives "assistance in bathing only one part of the body" if the person functions as defined above, except that the person is assisted in washing only one part of the body, such as the back alone or one leg alone. The class "assistance in bathing more than one part of the body" includes the individual who is assisted in washing more than one part of the body or who does not bathe. This last, most dependent category, includes also the following: the person to whom water is brought even though the person may wash independently; the person who is helped in or out of a tub as regularly as once a week; the person who is regularly supervised for reasons of safety although the person may wash independently; and the person who cannot reach the feet to wash them.

Dressing is the overall complex behavior of getting clothes from closets and drawers and then getting dressed. A person gets "completely dressed without assistance" (first of the three classes of dressing in Table 1) if no other person is involved in getting clothes from closets and drawers or in putting on the clothes, including brace, if worn, and including outer garments and footwear. Fasteners must also be managed without assistance. Footwear includes such items as socks and slippers or shoes. The intermediate category of dressing includes those who get their own clothes and dress independently as defined above "except for assistance in tying shoes." A person is placed in the third and most dependent category if the person receives "assistance in getting clothes or in getting dressed" or remains "partly or completely undressed."

Going to toilet is the act of going to the room termed the "toilet room" for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes. The person who functions wholly unaided, including getting to the room, is classed as functioning "without assistance" (first of the three classes in Table 1). It should be noted that an individual in this class may or may not be using an object for support such as a cane, walker, or wheelchair; and may be using a bedpan or commode at night, in which case the individual must empty it in order to be considered in the "without assistance" category. If another person assists in any part of the function, the toileting status is recorded as "receives assistance" (intermediate toileting category in Table 1). Toileting status is also recorded as "receives assistance" for an individual who uses the toilet room at certain times and at other times uses a daytime bedpan or commode. If a person is occasionally incontinent, but manages completely independently insofar as toileting is concerned, toileting function is recorded as "without assistance."

Transfer is the process of moving in and out of bed and in and out of a chair. If no other person is involved in the transfer, the person being evaluated is considered to function "without assistance" (first of three classes of transfer in Table 1). Such a person may be using an object for support, e.g., cane, walker, or bedpost. The intermediate category, namely, "with assistance," applies if another person is involved in the process. For persons in the third category and bedridden who do not leave the bed at all, when evaluating transfer status, the observer may be told that the person is not allowed to transfer unless supervised for reasons of safety. The observer than determines whether such supervision is a reality. The observer may occasionally find, for example, that a daughter claims she supervises her mother whenever the mother moves from one place to another, when observation reveals that the mother moves about entirely on her own and the daughter means that she is always within hearing distance.

Continence refers to the physiological process of elimination from bladder and bowel where incontinence is the involuntary loss of urine and/or feces. The function is thought of as the primitive function of control and does not include any consideration of hygiene, toileting, or constipation. The person is classed as "controls urination and bowel movement completely by self" (first of three continence categories in Table 1) if no other person assists. Such a person can exert some degree of control on the process independently by medication or by self-admistered enema (or, in the case of a person with a colostomy, may manage this independently). The case in which a slight amount of wetness or slight soiling of underclothes is occasionally noted by others and not perceived as incontinence by the person is recorded as "controls urination and bowel movement." The person who does not get to the bathroom or commode on time or who is incontinent at least once during the 2-week period of the evaluation is considered as "has occasional accidents," the intermediate category. Persons in the third category are incontinent or controlled by the supervision, direction or intervention of another person, presence of a catheter or planned, supervised scheduling for bowel control are included in the incontinent category.

Feeding concerns the process of getting food from a plate or its equivalent into the mouth. It is considered in a primitive sense and without concern for social niceties. A person feeds independently "without assistance" (first of three classes of feeding in Table 1) when this primitive process of ingestion is accomplished without the aid of another person. The intermediate category applies to the individual who feeds independently but receives assistance in cutting meat or buttering bread. The third category, "receives assistance," applies to the individual who is assisted in this feeding process or who is fed partly or completely parenterally.

The form in Table 1 includes all the terms needed in the evaluation. Extensive guides are not needed, although the definitions presented above may be required initially to instruct the observer or in unusual individual patient circumstances. In the interest of maximum accuracy and reliability, the observer may create test situations. The observer may, for example, ask the person to show the bathroom and medications in another room (or a meaningful substitute object). This serves as an opportunity for direct observation of transfer and locomotion and checks on the reliability of information given about bathing, dressing, going to the toilet, and transferring.

Data recorded on the form are converted into an Index ADL grade with the aid of the definitions presented in Table 2. Note from Table 2 that two descriptions would permit one to distinguish between "Independent" and "Dependent" levels for grading purposes; yet three descriptions are presented for the observer to consider on the recording form. Introduction of an intermediate description increases observer awareness of subtle distinctions and, thereby, increases reliability. The intermediate description is classified as dependent for certain functions and independent for others. For grading purposes, the intermediate description of bathing and dressing for example, is classed as dependent. The occasional individual classified as Other (usually less than 5% of the persons) according to the Index, does not have to be eliminated from all studies. By definitions, a person so classed is more dependent than one classed as A or B, and more independent than one classed as G. Individuals classed as Other can, therefore, always be compared relative to those classed as A, B or G. Experience has also shown that the unique profile of a person classed as Other tends to persist and thus permits a precise determination of improvement or deterioration when changes occur. For example, a person who is classified as Other because he is incontinent and dependent in dressing clearly deteriorates when the person develops bathing dependence in addition to incontinence and dressing dependence (grade of D).

Environmental artifacts that tend to influence ADL levels are occassionally encountered. For safety reasons, some hospitals require nurses to supervise patients who shower or get into tubs. During the first few days in the hospital, patients are sometimes kept in bed until the staff can assess their behavior and the degree of dependence permissible. In some nursing homes, patients are kept in bed and not permitted to dress. For safety and convenience, water for bathing and clothes for dressing are sometimes brought to patients. All these special conditions can result in ADL ratings that are lower than they might be in the absence of such restrictions. A test of actual functional level is possible and is indicated for certain studies.

Exhibit B

Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This Exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II. *Definitions:* As used in this Exhibit.

A. *"Interest Credit"* means the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. *"Interest Credit and Rental Assistance Agreement"* means an agreement between FmHA and the borrower providing for interest credits and/or rental assistance, RRH, or RCH loans. This agreement will be on Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement (RRH and RCH loans)."

C. *"Project"* means the housing and related facilities financed with the RRH or RCH loan.

D. *"Basic Rental"* means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 40- or 50-year period at 1 percent per annum.

E. *"Market Rental"* means a unit rental charge determined on the basis of operating the project with the payments of interest which the borrower is obligated to pay under the terms of the promissory note.

F. *"Overage"* means the amount by which total rental payments paid by the tenants of a project exceed the total basic monthly charge. The amount of overage will be computed as interest in excess of a 1 percent rate.

III. *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency; or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 40 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

A. Plan I will be available only to broadly based nonprofit corporations and consumer cooperatives.

B. Plan II will be available to broadly based nonprofit corporations, consumer cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

IV. *Options of Borrowers:* An eligible borrower may *choose* Plan I or Plan II, as described below, for determining interest credits on its loan.

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to low-income nonsenior citizens and low- and moderate-income senior citizens or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, persons, and senior citizens and handicapped persons of low and moderate incomes. Under Plan II interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare two budgets, one on the basis of a 1 percent interest rate loan to determine basic rental, and a second budget on the basis of a loan at the interest rate shown in the promissory note to determine market rental.

b. Determine both basic rental and market rental for the different units based on the two budgets. (See Exhibit B–1)

c. Determine adjusted personal income of each tenant and have each tenant complete Form FmHA 444–8, "Tenant Certification." Determine the monthly rent to be paid by each tenant household.

d. Assign a unit of appropriate size for each eligible tenant household based on the number, relationship, and sex of the persons in the household. A household should not be assigned a larger unit than is actually needed. The occupancy standards set forth in Form FmHA 444–27, "Rental Assistance Agreement," should be used as a guide in this respect.

e. Determine the required monthly payment on the loan at one percent interest and overage month for the total units developed with any one loan. The amount of payment will be computed separately for each loan using Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

V. *Determining the Amount of Payment:*

A. *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a three percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a one percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overages.

VI. *Special Conditions.*

A. *Leases.*

1. Monthly or annual leases will be executed with each tenant occupying a rental unit. The State Director should issue State supplements covering any State laws, special conditions or local customs affecting leasing arrangements that may exist in the state. The lease form, for projects operating under Plan II, in addition to other statements outlining the conditions of the lease, should contain the following statement: "I understand and agree that the monthly rental payment under this lease will be $———. I also understand and agree that my monthly rental payment under this lease may be raised or lowered, based on changes in my income and changes in the number and age of persons living in my household. The rental payment will not, however, be less than $——— [Basic Rental] nor more than $——— [Market Rental] during the terms of this lease.

2. The lease agreement in congregate housing cases must include in the major provisions a statement that the tenant's ability to live independently in the project with the support services available will be evaluated on a continuous basis. The tenant may be requested to vacate if a determination is made that the tenant is no longer able to live in the project without additional assistance. This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

3. Loans will be made on the basis of the units being rented to eligible tenants under Plan I or Plan II as described in paragraph IV of this Exhibit. If in connection with the servicing of the loan it become necessary to permit ineligible persons to occupy the housing for temporary periods in order to protect the financial interest of the Government, the State Director may authorize the borrower in writing to rent units to ineligible persons subject to the State Director determining that:

a. The borrower has made a diligent but unsuccessful effort to rent the units to eligible tenants.

b. The borrower will continue to try to find eligible tenants.

c. The units will be rented on a monthly basis and only until they can be rented to eligible persons.

d. The ineligible tenants will be charged a rental surcharge as described in paragraph VI B of this Exhibit.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI, A 2 to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $60 per month, this ineligible tenant would pay $75 per month. The 25 percent surcharge, or $15 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the market rental.

C. *Vacancies.*

1. When construction is completed and all the units are ready for occupancy, vacant units will be assumed to be rented at the basic monthly rental in computing the amount of payment.

2. When all construction is not completed but all FmHA loan funds are outstanding, some of the units are ready for occupancy, and the contractor consents in writing to permit occupancy, the incompleted units will be assumed to be rented at the market monthly rentals in computing the amount of payment.

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD) Housing Assistance Payments Program or FmHA Rental Assistance.* When rental units in an RRH project are leased under the Section 8 program, Form FmHA 444–7 will be completed in accordance with Exhibit H for new construction and Exhibit G for existing units. Projects authorized to utilize rental

assistance will complete Form FmHA 444–7 in accordance with Exhibit C.

E. *Special Cases.* Cases and situations not covered by this Exhibit or Exhibit C or H will be handled on an individual case basis with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing and that the housing is or will be rented only to eligible tenants unless authorized in writing by FmHA.

VII. *Execution of Agreements:*

A. *Interest Credit and Rental Assistance Agreement.* Interest credits may become effective at the beginning of the month in which construction is completed on a structure and the units are ready for occupancy. When the project consists of more than one structure, interest credits may become effective for each structure as it is completed and ready for occupancy. When the borrower knows the date the interest credit should become effective, the borrower should notify the District Director and execute Form FmHA 444–7. A separate Interest Credit and Rental Assistance Agreement will be executed for each loan the borrower receives.

B. *Change in Interest Credit Plan.* A borrower under Plan I or Plan II may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement during the month of November or December preceding the year in which the new plan will be in effect except that borrowers entering into the rental assistance program may do so at any time. Except for rental assistance, Form FmHA 444–7 will be executed during November or December, but will not be effective until the following January 1.

C. *Borrowers who are not Receiving Interest Credit.* If an eligible borrower did not execute an Interest Credit and Rental Assistance Agreement in accordance with paragraph VII A, it may do so during the month of November or December preceding the year for which the interest credit is to be received. Form FmHA 444–7 will be executed during November or December, but will not be effective until the following January 1. In an unusual case, the National Office may grant interest credits to be effective immediately when the State Director provides adequate documentation that unless interest credits are granted immediately the project cannot continue on a sound financial basis.

VIII. *Tenant Certification: Tenant certification and recertification for interest credit borrowers will be in accordance with § 1944.215(j) of Subpart E of Part 1944.*

IX. *Loan Payments:* With each payment made, the borrower will complete Form FmHA 444–29. The FmHA representative handling the transmittal to the Finance Office will complete Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal." The forms will be executed in accordance with the requirements of the Forms Manual Insert. The transmittal of these will be handled in accordance with FmHA Instruction 1951–B.

A. *Plan I.*

1. The borrower will make monthly payments in an amount necessary to repay the loan as if the loan carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this Exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2.

2. When a payment is made for any month that involves a rental surcharge, Forms FmHA 444–29 and 444–9 will be completed with the amount of the surcharge being inserted in the spaces provided. These forms will be completed and the amount shown and transmitted regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II.* The borrower will make monthly payments as though the note was written at a 1 percent interest note plus any overage due and payable whether or not collected from the tenant.

X. *Servicing:* Any unusual case that cannot be serviced in accordance with this Exhibit should be submitted to the National Office with the facts involved and the State Director's recommendations.

Exhibit B–1

Example of Interest Credit Determination For RRH or RCH Projects (Plan II)

$100,000 RRH Loan—Approved During 1972 Fiscal Year Project Contains Four 1-Bedroom Units and Four 2-Bedroom Units

Budget for Market Rent[a]		Budget for Basic Rent[a]	
Operating, Maintenance, Vacancy and Contingency allowance, Reserve and Return to Investor, if applicable[b].	$5,277	Operating, Maintenance, Vacancy and Contingency allowance, Reserve and Return to Investor, if applicable[4b].	$5,277
Loan Repayment at 9% interest—$100 M x $91.23[c].	$9,123	Loan Repayment at 1% interest—$100 M x $25.52[c].	$2,552
Total Annual Cost	$14,400	Total Annual Cost	$7,829
$14,440÷12=$1,200 cost per month.		$7,829÷12=$652[a] cost per month	
Market rent for 2-BR units—$160.		Basic rent for 2-BR units—$91	
Market rent for 1-BR units—$140.		Basic rent for 1-BR units—$72	
($160×4)+($140×4)=$1,200—monthly income.		($91×4)+($72×4)=$652—monthly income	

[a] Two complete and accurate budgets must be prepared. One for the Market Rent and one for the Basic Rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized).

[b] The borrower has the option of paying all utility costs (except for the telephone and charges for cable TV) or they may be paid directly by the tenants. When the tenant pays utilities, the rental rate paid by the household will be reduced by the allowance as determined in accordance with Exhibit A-5A.

[c] Factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

[d] Rounded to nearest dollar.

Exhibit C

Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce the rents paid by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to this Subpart.

II. *Definitions.*

A. *Adjusted Annual Income.* This is the total planned income of the household for the next 12 months as defined in § 1822.3(n) of Part 1822 Subpart A paragraph III N, FmHA Instruction 444.1 less 5 percent, thereof, and less an additional $300 for each minor person, excluding the tenant and co-tenant, who is a member of the household and lives in the rental unit.

B. *Adjusted Monthly Income.*

This is the amount obtained by dividing the Adjusted Annual Income by 12.

C. *Eligible Tenants.* Any low-income household handicapped persons, or senior citizen that is unable to pay the approved rental rate for an eligible FmHA RA units within 25 percent of their adjusted monthly income and whose adjusted annual income does not exeed the limit established for the State as indicated in Exhibit C to Part 1822 Subpart A, FmHA Instruction 444.1.

D. *Eligible Project.*

1. All projects, except (a) LH loans and grants, and (b) direct RRH, and insured RRH loans approved prior to August 1, 1968, must convert to Interest Credit Plan II before they are eligible to receive rental assistance. All new RRH projects must also operate under Plan II to receive rental assistance. For a borrower to have an eligible project, the loan must be an:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of this subpart, or

c. RCH insured or direct loan, or

d. LH Loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Projects with all or a part of the units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation by either the dual or single track processing procedures will not be considered an eligible project. This exemption does not prohibit the borrower from utilizing HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA rental assistance for other eligible households in the same project.

E. *Rental Assistance.* Rental assistance, as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including costs of all utilities and services, when applicable) for the unit being occupied by the household. When the household's

adjusted monthly income is less than the allowance established for utilities and services billed directly to and paid by the tenant, the owner will pay the household that difference in accordance with paragraph VII A of this Exhibit. Rental Assistance is further defined as:

1. For projects operating on Interest Credit Plan II, it is the difference between 25 percent of the household's adjusted monthly income and the basic rent including utilities for the unit.

2. For all direct RRH loans, insured RRH loans approved prior to August 1, 1968, and all eligible LH loans, it is the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate including utilities for the unit.

F. *Approved Rental Rate.* The rental rates (basic and/or market rent) determined by the budget for the project and approved by FmHA. Rental rates will be considered approved if the budget for the year has been approved in accordance with § 1802.78 Part 1802 Subpart G (paragraph X, of FmHA Instruction 430.2) and utility allowances, when required, have been determined and approved in accordance with paragraph VIII B of this Exhibit. The rental rate includes the amortized principal and interest payments, operating and maintenance costs, required deposits to the reserve account and a return on the owner's initial investment when allowed by FmHA regulations. The cost of utilities and other public services when paid by the owner will be included in the operating and maintenance expenses to determine the approved rental rates.

G. *Utility Allowances.* The allowance approved by FmHA to cover the cost of utilities which are payable directly by the households.

III. *Eligibility of Borrower.* All borrowers who meet the eligible project definition in paragraph II D of this Exhibit are eligible and are encouraged to utilize the rental assistance program and receive rental assistance payments on behalf of low-income tenants as provided for in accordance with this Exhibit. Generally, the borrower will initiate the processing of a rental assistance application. A borrower who does not request assistance may be encouraged to do so by the District Director if rental assistance units are available and 20 percent or more of the households eligible for rental assistance in an eligible project petition the borrower to obtain rental assistance on their behalf. The petitions shall be in writing to the borrower and contain the signature of the head of each household who is paying more than 25 percent of their adjusted monthly income for rent including utilities and desiring rental assistance. A copy of the petition will be submitted to the District Director.

IV. *Eligibility of Tenants.* All tenants as defined in paragraph II C of this Exhibit are eligible to receive the benefits of rental assistance when occupying a rental unit in an eligible project provided the project owner has agreed to provide such assistance in accordance with this exhibit and there are RA units available.

V. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of units that may receive rental assistance in any fiscal year. The State Director will limit the approval of rental assistance to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of units for existing projects and the number of units to be used with the applications for loans. The priority in allocating units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any units allocated to the State in accordance with any specific instructions from the National Office and approve requests for rental assistance to projects in accordance with the provisions of this Exhibit.

1. *Existing Housing:* The State Director will distribute any units allocated to the State for existing RRH, RCH, and LH projects by considering Forms FmHA 444–25, "Request for Rental Assistance," Special PN dated 9–28–78, that have been submitted by eligible borrowers. The State Director shall authorize rental assistance to projects with priority given to projects based on the earliest date that Form FmHA 444–25 and other required information is submitted to FmHA in acceptable form. (Also see paragraph X). The number of units to be granted in any project will be based on the number of households in the project needing rental assistance up to the maximum allowed. The National Office shall notify the State Director each year of any specific date by which all requests for rental assistance must be submitted to FmHA for consideration.

2. *New Housing:* Any units allocated to the State for new construction (which includes substantial rehabilitation) shall be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231 (d)(3) of Subpart E.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Limitation on number of units of rental assistance in each project:* The maximum number of units in a project to obtain rental assistance is limited to the following:

a. No limitation for eligible labor housing loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped except that the State Director may limit the percentage of units granted to senior citizen or handicapped projects to no more than 40 percent if it appears that the number of units distributed to the State will not be adequate to approve all requests for rental assistance.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 20 percent of the total number of units in the project.

d. An RCH or RRH project planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 20 percent of the total number of units designed for low- and moderate-income households and no limitations on the units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority:* An exception to the 20 percent limitation indicated in paragraphs V A 3 a, c and d of this Exhibit may be granted by the State Director for up to 40 percent of the units in any particular project (fractional units will be rounded to the next higher whole number). However, the total number of units of rental assistance granted by the State Director including exceptions, cannot exceed the number of units allocated to that State. Exceptions will be granted only when units are or can be made available and the following conditions exist:

a. When more than 20 percemt of the units are occupied by households who are paying more than 25 percent of their adjusted income for rent including utilities, and such units are no larger than needed to meet the household's need, or

b. The tenants in a project that is being assisted at the 20 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain rental assistance to remain in the project, or

c. The project is being developed in an area of extremely low-income households and the majority of the proposed tenants will be paying in excess of 25 percent of their income for rent including utilities.

2. *National Office Authority.* If the project is located in or is being developed in an area of extremely low-income households and the majority of the tenants are, or will be, paying in excess of 25 percent of their income for rent including utilities, the National Office may authorize the State Director to grant approval for a greater number of units on a case-by-case basis for up to 100 percent of the units to receive rental assistance. Such requests will be submitted to and approved by the National Office prior to loan granting or requesting obligation of rental assistance for more than 40 percent of the units in the project.

C. *Processing Exception Requests.*

1. A request for an exception to the 20 percent limitation for existing projects will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with supporting documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of units in excess of the 20

percent limit and justification for the approval. When National Office authorization is required to exceed the 40 percent limitation, the State Director will request this authorization by memorandum and will include the following:

a. For new projects, Form FmHA 444–25, the applicant's case file, complete data and documentation on the rental housing market situation, complete data and documentation on the income of the households likely to be served, the comments of the District Director, and the comments and recommendations of the State Director. If an applicant requests authority to exceed the 40 percent limitations for a new project after the loan is approved, such requests will not be approved until the project is completed, and at least partially occupied and it is apparent that full rentup will not occur unless the 40 percent limitation is exceeded.

b. For existing projects, Form FmHA 444–25, Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project, a copy of the project's waiting list for occupancy identifying eligible prospective tenants whose incomes have been verified and who are willing to occupy vacant units if an exception to the 40 percent limitation were made, a copy of any existing Rental Assistance Agreement and modifications thereto which may be in effect on the project, the comments of the District Director, and the comments and recommendations of the State Director.

2. The State Director will maintain Form FmHA 444–28, "Record of Rental Assistance Agreement." The record will include the borrower's case number, fund code, loan number, number of units in the project, number of units for rental assistance authorized and the effective date of each agreement and amendment. This information will be obtained from Form FmHA 444–25, Form FmHA 444–26, "Request for Obligation of Rental Assistance", and Form FmHA 444–27, "Rental Assistance Agreement." Any changes which are made in the number of rental units assisted will be recorded in the Record of Rental Assistance Agreements. Form FmHA 444–28 will be used for keeping this record.

VI. *Priority Among Eligible Households Within a Project Receiving Rental Assistance.* The borrower will determine priority for RA among tenants living in a project and among households applying for occupancy in accordance with this paragraph.

A. *In Existing Projects:*

1. 1. If the project is fully occupied at the time the rental assistance is granted, priority will be given to households paying the highest percentage of its annual adjusted income for rent including utilities. However, no household eligible to occupy a unit in the project will be required to move from the project to allow a household applying for a unit who has a higher priority to move in.

2. If the project has vacancies or vacancies occur and rental assistance is available, priority will be given to households already living in the project who are eligible for rental assistance before any new tenants are considered. Priority for new tenants in congregate housing projects will be based upon the selection criteria set forth in the borrower's statement of policy regarding management and operation submitted in accordance with Exhibit A–7 to this subpart and approved by FmHA. Priority for new tenants in other projects will be based on the date of the household's application for occupancy. If more than one household applies for a unit on the same date, the application will be time dated. If the household with the earliest date of application is unable or does not want to accept the rental assistance unit, the unit will be offered to the next earliest application. The application of a household who is unable for personal reasons or does not want to accept a rental assistance unit when notified, will be redated as of the current date if the household still wishes to be considered for occupancy.

3. If the project has vacancies or vacancies occur and rental assistance is available, the units will be leased to eligible households having the highest priority. Priority for new tenants in congregate housing projects will be based upon the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation, regardless of whether they qualify for rental assistance. Priority for new tenants in other projects will be based on date of application for occupancy regardless of whether they qualify for rental assistance.

4. If the project has vacancies or vacancies occur and rental assistance is not available, a household eligible for rental assistance may accept occupancy but cannot receive rental assistance. Such households will be considered for rental assistance in accordance with paragraph VI A 1. If such households elect not to accept occupancy because rental assistance is not available, their application for a unit will retain its original date for priority.

5. Tenants receiving the benefits of rental assistance shall continue receiving such benefits as long as they remain eligible tenants and there is a rental assistance agreement in effect.

B. *In New Projects.* Applications for occupancy should be accepted during the construction phase of the project. Priority in congregate housing projects will be given based on the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation. Priority in other projects will be given based on the date of the household's application for occupancy. If all or a percentage of the units are authorized to receive rental assistance, such number of units will not be rented to households whose adjusted annual income exceeds the limits established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1) without the written approval of the District Director. The District Director will not grant such approval until a review has been made of the borrower's method of advertising the units and it has been determined that households eligible for rental assistance are not available or do not desire occupancy.

VII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* Each borrower and management agent for each project that is to receive rental assistance should fully understand the responsibilities and requirements of carrying out the program. The borrower and management agent are the key to the successful operation of the program. The following guidelines will be followed:

A. Direct rental assistance payments will not be made to eligible tenants receiving rental assistance except in those instances when utilities are paid by the household and 25 percent of the household's monthly adjusted income is less than the allowance for utilities. In these cases, the borrower will pay the household that difference upon the household providing the borrower evidence that the utility bills are due or have been paid (See paragraph VIII A). The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants.

B. The borrower must initially submit Form FmHA 444–8, "Tenant Certification," for each tenant. The initial tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the unit. Subsequent tenant certifications must be obtained annually and submitted to the District Office with the first monthly payment following the date of the certification. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

C. The incomes reported by the tenants must be verified by the borrower in accordance with § 1944.215 (j)(3) of this subpart.

D. Borrowers utilizing RA must comply with § 1802.78 Part 1802 Subpart G, (paragraph X of FmHA Instruction 430.2). RA will not be approved for projects until the operating budgets have been approved by the FmHA State Office or the District Director. District Directors, with assistance in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household.

1. Monthly or annual leases will be executed with each household occupying a rental unit. The State Director may issue State supplements covering any special conditions or local customs affecting leasing arrangements. In addition to other statements outlining the conditions of the lease, the lease form for tenants receiving RA should contain the following statements rather than those required in paragraph VI A of Exhibit B to this subpart:

"I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be $——, (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $—— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

I Further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of household members living in the household. I

understand that should I receive rental assistance benefits to which I am not entitled that I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

I also understand and agree that my monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of household members living in my household. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than $—— (basic rental) nor more than $—— (market rental) during the remaining term of this lease."

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $—— (basic rental) nor more than" from the last sentence of the above statement.

2. Lease clauses which fall within the classifications listed below shall not be included in any lease.

a. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

b. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

d. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

e. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

g. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenants right to appeal on the grounds of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

h. *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant, as a part to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

3. A copy of a completed Exhibit A–5A of this Subpart when the tenants pay part or all of the utilities and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

VIII. *Handling Utility Allowances and Determining the Amount of Rent.*

A. *Payment of Utilities.* All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly. In an existing project which is not individually metered, the project will be converted to individual meters if feasible and an energy savings can be achieved. In every case, the approved rents for the projects must include the cost of utilities (except telephone and charges for cable TV) paid by the owner. In a project where the tenant is billed directly for the utilities, the tenant receiving the benefit of rental asistance will pay the owner as rent the difference between the established allowance for utilities which the tenant pays and 25 percent of the household's adjusted monthly income. If, however, 25 percent of te household's adjusted monthly income is less than the monthly allowance for utilities, the owner will pay the tenant that difference as prescribed in paragraph VII A. In a project where the owner pays all the utilities, the tenant will pay the owner the full 25 percent of the adjusted monthly income toward the approved rent for the unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A–5A of this Subpart and submitted to FmHA for approval. The data will be analyzed by the FmHA State Office to determine the allowance that will be permitted. The utility allowance is to be approved on a project-by-project basis. If the allowances are reasonable for the project, The Exhibit A–5A will be approved. The allowable amounts will be indicated in each lease agreement between the owner and tenant.

C. *Changes in Allowances.* The utility allowance may and should be adjusted to reflect substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increasing the amount of the rent paid by tenants will be processed in accordance with Part 1802 Subpart G Exhibit F (FmHA Instruction 430.2).

IX. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* The effective date of the Rental Assistance Agreement will be the first day of the month it is executed unless assistance is granted under appeal in accordance with paragraph XII of this Exhibit; then, the effective date will be retroactive to the first of the month in which assistance was denied.

B. *Term.*

1. *For New Construction.* The term of the agreement shall be for a period of twenty (20) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental asistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (A new construction project is one in which no unit has been occupied.) Upon expiration of the twenty year period, a new agreement may be executed. If a new agreement is considered, it will be made for a period not to exceed five (5) years.

2. *For Existing.* The term of the agreement shall be for a period of five (5) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (An existing project is one in which one or more units have been occupied.) Prior to the termination date of any agreement a new Form FmHA 444–25 may be submitted. If a new agreement is consummated, it will be made for a period not to exceed five (5) years.

X. *Processing of Rental Assistance Applications.* All requests for rental assistance will be processed in accordance with this paragraph and may be approved by the State Director.

A. *Existing Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 444–25, with the District Director. A separate Form FmHA 444–25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance" with columns 1 through 12 completed for each tenant in the project.

b. Approved or proposed budget for the year with Exhibit A–5A of this Subpart attached when applicable.

2. The District Director will review the budget, Exhibit A–5A, and Form FmHA 444–25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 444–25 and submit all data provided by the borrower to the State Director.

B. *Projects to be Funded.*

1. Applicants requesting funding under the RRH or LH programs planning to utilize the rental assistance program should submit a completed Form FmHA 444–25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of rental assistance requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.*

1. *Timing of Action.* If the State Director determines that rental assistance can be granted or a change in the number of rental assisted units is needed, Form FmHA 444–26

will be prepared. Form FmHA 444–26 will be prepared and distributed in accordance with the Forms Manual Insert. *Form FmHA 444–27 will not be executed until the Request for Obligation of Rental Assistance has been returned from the Finance Office indicating that the requested number of units and funds have been obligated for the project.*

2. *Initial Request.* Once the initial request for rental assistance has been obligated by the Finance Office, the State Director will prepare an original and three copies of Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement RRH and RCH Loans," and an original and two copies of Form FmHA 444–27. The State Director will keep one copy of the Forms in the State Office borrower file. The original and two copies of Form FmHA 444–7 and the original and one copy of Form FmHA 444–27 will be sent to the District Office with the covering memorandum authorizing the District Director to execute the agreements. Both originals and copies will be executed by the borrower and District Director. The District Director will retain the original of Form FmHA 444–27 in the borrower file and the executed copy will be given to the borrower. The District Director will send the original of Form FmHA 444–7 to the Finance Office, retain a copy in the borrowers file and an executed copy will be given to the borrower.

3. *Modification of an Existing Agreement.* When a change in the amount of rental assistance has been obligated by the Finance Office, the Form FmHA 444–27 will be prepared, signed and distributed in the same manner as provided for in paragraph X C 2 except a Form FmHA 444–7 is not required.

4. If rental assistance cannot be provided, the State Director will by letter, through the District Director, inform the borrower in writing of the reasons.

XI. *Method of Payment of Rental Assistance to Borrower.* The borrower will prepare a separate report for the project using Form FmHA 444–29. The worksheet will be prepared and distributed in accordance with the instructions for preparation or the Forms Manual Insert. This information will be used by the District Director in preparation of Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal." The form must be completed in accordance with the FMI. The required payment will be transmitted with the form to the Finance Office. The rental assistance payment will be mailed by the Finance Office directly to the borrower within 15 working days of receipt of a properly completed Form FmHA 444–9. Since the check will be sent directly to the borrower, the District Director must be sure that the borrower's address on Forms FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," and 450–14, "Annual Statement of Loan Account," are correct. If the address shown on these forms is not correct, the District Director will complete Form FmHA 450–10, "Advise of Borrower's Change of Address or Name," prior to any request for payment of rental assistance. However, when a borrower has more than one project within a county, all checks must be sent to the same address.

XII. *Rights for Appeal if Rental Assistance is not Granted by Farmers Home Administration.*

A. Households who have requested rental assistance in writing but have been denied such assistance (whether in whole or in part) either by the borrower or District Director are to be notified in writing of the specific reasons why they have been denied rental assistance. If a household has requested rental assistance directly to the borrower in writing, the borrower is responsible for notifying the household in writing of the reasons why rental assistance was not made available.

B. Borrowers who have requested rental assistance and are denied such assistance, in whole or in part by the Farmers Home Administration, will be notified in writing of the specific reasons why such assistance was denied. The letter informing the borrower of the denial will advise the borrower that the decision may be appealed by writing to the Administrator.

C. The letter informing the household or borrower of the denial of assistance and the reasons therefor must include:

1. In case the determination was made by the borrower, that the decision is subject to appeal to the FmHA District Director giving name and address.

2. In case the decision was made by the District Director, that an appeal may be made to the State Director giving name and address.

3. In case the decision was made by the State Director, that an appeal may be made to the Administrator giving name and address.

4. A statement that "any appeal must be filled within 45 days of the date of this notice of denial of assistance."

D. If the State Director denies an appeal for assistance, the borrower or household may appeal that decision to the Administrator, Farmers Home Administration, Washington, DC 20250. The Administrator upon review of the appeal shall either affirm or reverse the decision.

E. If at any time, it is determined that a borrower or a household was eligible to receive assistance after the effective date of this Exhibit and assistance could have been made available in accordance with this Exhibit, the provision of the assistance will be retroactive to the first of the month in which assistance was initially denied.

F. All actions by FmHA officials must be within 30 days of receipt of an appeal.

XIII. *Forms and Exhibits.* Incorporated as a part of this regulation are Exhibits A–5A, and Form FmHA 444–7, which are to be utilized in determining amount of rental assistance to be provided.

Exhibit D

Guide Letter for Use in Informing Interim Lender of FmHA's Commitment

(Name and Address of Private Lender)

Dear Mr. ——— :

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

The applicant has been required by FmHA to deposit $——— with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved [contract documents,] * drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,] * drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of

the construction contract]* based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction, (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA loan applicant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necesssitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified FmHA may make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director ———————

Exhibit E

Articles of Incorporation

(Not for Profit)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of ——.

First: The name of the corporation is ——.

Second: The location of its principal place of business in this State is ——, —— County.

Third: The location of its registered office in this State is ——, ——, —— County.

Fourth: The name and address of its resident agent in this State is ——, ——, ——, ——, —— County.

Fifth: This coporation is organized not for profit under —— and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

To acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to race, color, religion, sex, marital status, physical or mental handicap (must possess capacity to enter into a legal contract) or national origin;

To acquire, improve, and operate any real or personal property or interest or right therein or appurtenant thereto;

To sell, convey, assign, mortgage, lease any real and personal property;

To borrower money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of director shall be prescribed in the bylaws, but shall be not less than five nor more than nine.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by bylaws.

Eighth: The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due, shall be used to make advance payments on any loans owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators:

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for, and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purpose to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.[1]

IN TESTIMONY WHEREOF, WE have unto subscribed our names on ——, 19—.

(Insert acknowledgment or other form if required by State law.)

Bylaws

Bylaws of

A Nonprofit Corporation

Article I

Office.

Section 1.01. Principal Office.

The principal office of the corporation in the State of———shall be located at———, County of———.

Section 1.02. Registered Office and Agent.

The corporation shall have and continuously maintain in the State of——— a registered office and a registered agent whose office is identical with such registered office.

Article II

Members.

Section 2.01. Eligibility for membership.

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the Town of———or in the surrounding trade area, applys for membership, and pays the required membership fee shall be eligible.

Section 2.02. Approval of Applications for Membership.

All applications for membership shall be approved at (1) any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the existing membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. Voting Rights.

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. Termination of Membership.

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at

* These words may be omitted for projects constructed by the owner-builder method of construction without a construction contract.

[1] Duration should be perpetual, or long enough to cover the period of the loan plus five years, or for the longest period permitted by the State law.

such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who become ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. Resignation. Any member may resign by filing a written resignation with the secretary.

Section 2.06. Reinstatement. Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. Transfer of Membership. Membership in this corporation is not transferable or assignable.

Section 2.08. Membership—Fees. The membership fee shall be $———or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. Membership—Liability for Corporation's Obligations. Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. Membership—Minimum Number. The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.[1]

Section 2.11. Membership—Residence. A majority of the members shall be residents of the community where the housing is or will be located.

Article III

Meetings of Members.

Section 3.01. Annual Meeting. An annual meeting of the members shall be held at———on the———of the month of———each year, beginning with the year 19—at the hour of——O'clock,—. M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. Special Meetings. Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03. Place of Meeting. The board of directors may designate any place within or not more than——miles from———as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3:04. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally of or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. Quorum. At such a meeting a quorum shall consist of 30 percent [2] of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority for the members present may adjourn the meeting from time to time without further notice.

Section 3.07. Proxies.

(a) At any meeting to the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

Board of Directors.

Section 4.01. General Powers. The affairs of the corporation shall be managed by its board of directors.

Section 4.02. Number, Tenure, and Qualifications. The number of directors shall be ———.[3] The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number directors, at least five must be among the leaders in such community.

Section 4.03. Regular Meetings. A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than —— miles from ————, for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. Special Meetings. Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than —— miles from ————as the place for holding such meeting.

Section 4.05. Notice. Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the directors address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. Quorum. A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

[1] For projects exceeding $100,000, the minimum of members should be larger than 25, and should be at least one member per unit in the project.

[2] For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

[3] Number of directors must be not less than 5 nor more than 9.

Section 4.07. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. Vacancies. Any vacancy occuring in the board shall be filled by the board until the next meeting of the members and until a succesor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. Compensation. Directors shall not receive any compensation for their services as directors.

Section 4.10. Directors—Absence from meetings. Any director who is absent from—consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. Directors—Residuary Powers. The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except the specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested in the board.

Section 4.12. Directors—Removal from Office. A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

Officers.

Section 5.01. Officers. The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. Election and Term of Office.

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon therafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. Removal. Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. President. The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. Vice President. In the absence of the president or in the event of his inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. Treasurer. The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation, from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositaries as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president or the board.

Section 5.08. Secretary. The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

Order of Business.

Section 6.01. Order of Business. The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. Parliamentary Procedure. On question of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

Committees.

Section 7.01. Committees of Directors. The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. Other committees. Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgement the best interest of the corporation shall be served by such removal.

Section 7.03. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor or appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. Chairman. One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. Vacancies. Vacancies in the membership of any committee may be filled by appoinments made in the same manner as provided in the case of the original appointments.

Section 7.06. Quorum. Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. Rules. Each committee may adopt rules for its own government not

inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

Contracts, Checks, Deposits, and Funds.

Section 8.01. Contracts. The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 80.3. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositaries as the board may select.

Section 8.04. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the corporation.

Article IX

Certificates of Membership.

Section 9.01. Certificates of Membership. The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, multilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. Issuance of Certificates. When a member has been elected to membership and has paid any dues that may then be required, and delivered to the member by the secretary.

Article X

Books and Records.

The corporation shall keep correct and complete books and records of account and shall keep minutes of the procedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and record of the corporation may be inspected by any member, or members agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

Fiscal Year.

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

Seal.

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII

Waiver of Notice.

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

Repeal or Amendment of Bylaws.

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: *Provided, however,* No such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without an express assent of rights, privileges, or immunities then existing. Notice of any amendment.

The undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the ——— day of ——— 19— at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

Secretary ———————————

(Corporate Seal)

Exhibit G

RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)

I. *General.* This Exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of *existing Section 515 rural rental housing (RRH) units* for leasing under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program.

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Section 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882 (Federal Register Vol. 41, Part IV dated May 13, 1976). To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 25 percent of the tenant's income for rent. Therefore, RRH borrowers should advise tenants occupying a unit of a project who are paying more than 25 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. *Section 8 assistance for existing housing is administered by local housing agencies* authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. *FmHA policies concerning rental rates and payments.*

A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 15–25 percent of the household's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit *Plan I,* the *contract rent will be the market rental rate* for the units as determined by the current approved annual budget *using a 3 percent amortization factor* for principal and interest payments. (2) for borrowers operating *without interest credit* the *contract rent will be the market rental rate* for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments. (3) for borrowers operating in accordance with interest credit *Plan II,* the *contract rent will be the basic rental rate* as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculated and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit B of this Subpart.

IV. *Responsibilities.*

A. *Household.* A household must obtain a Certificate of Household Participation to obtain Section 8 assistance. A household receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Household Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Household Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.*

1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Supart G of Part 1802 of this chapter, (FmHA Instruction 430.2).

b. Review and approval of budgets and rental rates; and

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract

entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out his obligations under the contract.

V. *Special conditions.*

A. *Eligibility.*

1. The PHA will determine a household's eligibility before the Certificate of Household Participation is issued. To be eligible for Section 8 assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments under the Section 8 program will continue until the amount payable by the household equals or is greater than the contract rental rate. However, when 25 percent of the household's income equals or is greater than the contract rental rate chargeable for the unit, the household may still be able to occupy a rental unit under FmHA interest credit programs if 25 percent of the family's income is greater than the lowest established rental rate for the unit.

2. *Form FmHA 444–8,* "Tenant Certification," *will not be required* for tenants who have obtained a Certificate of Household Participation from the PHA. A copy of the Certificate of Household Participation will, however, be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. *Security deposits.* According to HUD regulations, the owner may require a household to pay a security deposit in an amount equal to the amount payable by the household toward one month's gross rent. Under HUD regulations, if a household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. *Payment for vacated units.* According to HUD regulations, *If a household vacates the unit in violation of the provisions of the lease, the owner may receive housing assistance payments in the amount of 80 percent of the contract rent* for a period not exceeding *60 days* or the expiration or other termination of the lease.

D. *Limitation of owners participation in the program.* HUD's regulation provides that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD Regional Administrator.

E. *Special problems.* Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

Exhibit H.—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

I. *General.* The attached Exhibit H–1 is the Memorandum of Understanding between the Department of Housing and Urban Development (HUD) and the Department of Agriculture, Farmers Home Administration (FmHA), concerning the application processing and operation of rural rental projects involving HUD Section 8 housing assistance payments. The Memorandum provides for a set aside of contract authority under Section 8 of the U.S. Housing Act of 1937 for new construction projects financed by FmHA under Section 515. Only units charged against this set aside are eligible under these procedures. This Exhibit and HUD's regulations published in 24 CFR Part 883 Subparts G and H contain the policies and procedures that will be followed by FmHA in implementing and carrying out the provisions of the Agreement.

II. *Establishment of Interest Rate for Section 8 Units.* FmHA will provide an interest reduction for all units under Section 8, except units in projects operated on a profit basis and approved after September 20, 1977. Since the advantage of this interest reduction must be passed through to the tenant in the form of lower rents, the budget for the Section 8 units should not reflect an excess of income over operating and maintenance expenses, debt repayment, reserve requirements, and for limited profit borrowers, a return on initial investment. If the borrower will operate the project on a nonprofit or limited profit basis, the payment of interest on the RRH loan will be based on at least a 1 percent interest reduction below the established interest rate for RRH loans for the units of a project under HUD's Housing Assistance Payments Contract (Contract). However, when the budget is prepared on the basis of a 1 percent reduction and the proposed Contract Rents exceed the applicable Fair Market Rents, the State Director may approve an interest reduction of 2 percent below the note rate of interest for the units utilizing the HUD Housing Assistance Payments Program. The State Director, in making this determination, must be sure that the budget is accurate and reflects reasonable and typical costs for the area and is necessary to make the project feasible. If the reduction of 2 percent below the interest rate of the note does not result in rental rates which are equal to or less than the Fair Market Rate, the State Director will submit a request including the budget, a narrative budget analysis, and other supporting data, to HUD's Field Office Director for approval of higher Contract Rents. HUD may approve increases of up to 20 percent above the Fair Market Rents. The interest rate shown on the note, however, will be in accordance with Exhibit B of FmHA Instruction 440.1, available at any FmHA office. This reduction in interest or interest credit will be accomplished in the manner indicated for Plan I and Plan II in Exhibit B of this Subpart and in accordance with paragraph IV of this Exhibit.

III. *Section 8 Contract Rents.* The Section 8 Contract Rent rates will be determined by FmHA. The Contract Rents will be determined as outlined in paragraphs II and IV of this Exhibit. The State Director should contact the HUD field office to obtain the Fair Market Rents (including additional allowance for the elderly) in effect for the proposed project's location at the time the certification is made.

IV. *Budgets and Interest Credit Agreements.* Budgets and interest credit agreements must be prepared in accordance with Exhibit B and the following:

A. *Total Project Under Section 8.* If a project is developed with all units of the project covered by Section 8, one budget will be prepared. The budget will be based on an interest rate which has been set for the project in compliance with paragraph II of this Exhibit. When applicable, a Form FmHA 447–7, "Interest Credit and Rental Assistance Agreement" will be entered into with the borrower to show the amount of interest reduction. (RRH and RCH loans) Check Plan I S 8 of the agreement and show the amount of interest credit as the difference between the amortized payment at the note rate of interest and the amortized payment calculated at the effective interest rate.

B. *Mixed Project for Profit.* If a mixed project is developed (a project with only a part of the units covered by Section 8 contract) and the borrower is operating on a profit basis, one budget will be prepared based on market rent. The market rent and contract rent set must be the same. If the borrower agrees to operate on a limited profit or nonprofit basis, paragraph IV C of this Exhibit will apply.

C. *Mixed Project for Nonprofit and Limited Profit.* When a mixed project is developed (a project with only a part of the units of the project covered by HUD's contract and a part of the units to utilize interest credit Plan II in accordance with paragraph IV B of Exhibit B of this Subpart, three budgets must be prepared. The budgets must be for basic rent, Section 8 contract rent, and market rent. An "Interest Credit and Rental Assistance Agreement", will be entered into with the borrower to allow interest credit on all units. Check Plan II of the agreement. The loan payments will be based on the amortized payment at 1 percent interest plus all overages. The amount of overage for those units under Section 8 contract will be the difference between the basic rent and the contract rent. The amount of overage for those units not under Contract will be in accordance with Exhibit B of this Subpart.

V. *Compliance and Certifications Required.* To comply with the provisions of the Memorandum of Understanding with HUD, certain requirements must be met and certifications made. These requirements and certifications are listed below:

A. *Minimum Property Standards.*

1. Since the FmHA has adapted HUD's Minimum Property Standards (MPS) 4910.1, no additional requirement other than compliance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1), shall be necessary to assure that the housing is planned in accordance with the MPS. However, appropriate state and local laws, codes, ordinances and regulations must also be met.

2. The borrower's architect engineer will provide a certification that the final drawings and specifications meet all MPS, state and local laws, codes, ordinances, and regulations.

B. *Rent Certification.* The State Director will certify for each project that the rental rates to be used in the contract for the units

of the project are reasonable based on quality, location, amenities, management and maintenance services, and unless HUD has authorized higher rates, do not exceed the applicable Fair Market Rents for newly constructed Section 8 units as published in the Federal Register and in effect at the time the certification is made. Exhibit H–3 contains the necessary language for this certification.

C. *Site and Neighborhood Standards.* The State Director will certify that the location of each project is in compliance with § 1944.215(q) of this subpart. Exhibit H–4 will be used to assist in determining compliance with this requirement. Exhibit H–3 contains the necessary language for this certification.

D. *Equal Opportunity.*

1. FmHA agrees to assure compliance with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11246 in accordance with FmHA Instruction 1901–E. Obtaining properly executed Form FmHA 400–1 "Equal Opportunity Agreement," Form FmHA 400–4, "Nondiscrimination Agreement," and Form FmHA 400–6, "Compliance Statement," and completion and transmittal of Form FmHA 400–3, "Notice to Contractors and Applicants," will meet those requirements.

2. To comply with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, the applicant must complete HUD Form 935.2, "Affirmative Fair Housing Marketing Plan." The State Office will obtain the form and instructions for filing from the HUD area office and supply them to District Offices for distribution to applicants. The completed form will be reviewed for adequacy and approved by the loan approval official. Marketing of the units must begin no later than 90 days before project completion. To further comply with Executive Order 11063 the mortgage must contain the covenants as required in § 1944.236(b) of Subpart E to Part 1944 of this chapter.

3. The applicant must agree to and sign a certification that there will be compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968 as it pertains to business opportunity, training, and employment of lower income residents. Exhibit H–5 may be used for this purpose.

4. The State Director will prepare a certificate for each project that all of the above equal opportunity requirements will be met. Exhibit H–3 contains the necessary language for this purpose.

E. *Environmental Standards.*

1. FmHA Instruction 1901–G, outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. FmHA Instruction 1901–G sets the threshold for multiple housing projects at 50. The references to 50 will be disregarded in the case of section 8/515 loans and *a threshold of 5* will apply to conform with the Memorandum of Understanding with HUD. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts which are unacceptable under National Environmental Policy Act (NEPA) and FmHA policies. All other requirements of FmHA Instruction 1901–G will be followed.

2. In compliance with paragraph VI C of the Memorandum of Understanding, the State Director will prepare a certification for each project that it complies with the National Environmental Policy Act and all rules, regulations, and requirements issued by FmHA pursuant thereto and that an environmental assessment on projects consisting of a total of 5 units or more has been made. Exhibit H–3 contains the necessary language for this purpose.

F. *Relocation.* Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to Public Housing Agency applicants only. It will be the responsibility of the applicant to provide any assistance required for relocation of occupants of the site on which the section 8/515 rural rental project will be located. FmHA loan funds are not available for this purpose. Generally, sites will not be selected which are occupied if relocation is necessary.

G. *Davis-Bacon Wage Rates.*

1. The provisions of the Davis-Bacon Act apply to all section 8/515 projects with *9 or more Section 8 assisted units.* FmHA Instruction 1901–D, outlines the procedures to follow to comply with this Act.

2. In compliance with paragraph VIII B of the Memorandum of Understanding, the State Director will prepare a certification for each project that there will be compliance with the Davis-Bacon Act. Exhibit H–3 contains the necessary language for this purpose.

H. *Other Federal Requirements.*

1. § 1944.215(r) of this subpart outlines the requirements of the Clean Air Act and Federal Water Pollution Control Act.

2. FmHA Instruction 1901–F and § 1944.215(t) of this subpart states that the applicant must comply with the requirements of the National Historic Preservation Act, the Archeological and Historic Preservation Act of 1974, and Executive Order 11593.

I. *Previous Participation.* It will be the responsibility of all applicants and applicant principals holding an interest in the entity to complete HUD Form 2530, "Previous Participation Certificate." (The State Office will obtain the form and instructions for filing from HUD and supply them to District Offices for distribution to applicants.) The complete form will be transmitted to HUD at the same time as transmitting the Form AD–621 "Preapplication for Federal Assistance," for their review, clearance and comment.

J. *Project Completion.*

1. The borrower's inspecting architect will provide a certification as outlined in Exhibit H–6. This certification and other data required is a part of the backup material necessary for the State Director to provide HUD with the certification required to comply with paragraph XII B of the Memorandum of Understanding.

2. The State Director, after receipt of the borrower's inspecting architect's certification and compliance with other requirements, will prepare a certification similar to Exhibit H–2 for transmittal to HUD indicating that:

a. The project was completed in accordance with the requirements in the Agreement to Enter Into a Housing Assistance Payments Contract.

b. The project is in good and tenantable condition.

c. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

d. There has been no change in management capability.

VI. *Processing Application.*

A. Applicants desiring to develop projects utilizing the Section 8/515 loan program should contact the County Supervisor or District Director before completion of the requirements of the Form AD–621. If the applicant desires to submit a preapplication, after counseling with FmHA personnel, the preapplication will be accepted and processed in accordance with existing regulations and this Exhibit. *In addition to items required in Exhibit A–6, the applicant will submit required copies of HUD Form 2530.* If obtainable, the applicant should also submit comments on the proposed project from the local governing body in which the project is to be located.

B. The District Director, upon receipt of Form AD–621 and required attachments, will review the preapplication for completion and accuracy. The District Director will then forward the completed preapplication to the State Director for submission of copies to HUD for review and comments. A letter of transmittal will be prepared by the State Director to HUD listing the data submitted for review.

C. Upon receipt of comments from HUD, Form AD–622, "Notice of Preapplication Review Action," will be completed and transmitted to the applicant outlining any further data required or conditions which must be met before or in completion of Form AD–625, "Application for Federal Assistance (Short Form)." The applicant should at this time be advised of the requirement for completion of Exhibit H–5.

D. Upon completion of the Form AD–625 and other requirements by the applicant, the District Director will revise the information for completeness and accuracy, prepare comments and recommendations, and submit the docket to the State Director for review and approval in accordance with existing regulations. The State Director will prepare and submit the required certifications to HUD. The Agreement to Enter into Housing Assistance Payments Contract will then be completed by HUD and the owner (applicant).

E. Construction of the project will not be permitted until (1) Agreement to Enter Into Housing Assitance Payments Contract has been executed, (2) the loan funds have been obligated, (3) interim financing has been arranged, or in case of multiple advances, the loan has been closed.

F. When the project is completed, the State Director will prepare the Certification of Project Completion (Exhibit H–3), and submit it to HUD. HUD will prepare the Housing Assistance Payments contract for execution. Upon execution, the project will be considered to be in operation.

G. All borrowers will provide reports to FmHA in accordance with Subpart G of Part

1802 of this chapter, (FmHA Instruction 430.2), FmHA Instructions 1944–E, and applicable loan agreements or loan resolutions. Borrowers will also be required to comply with HUD's reporting requirement for Housing Assistance Payments Contract. FmHA will inform HUD of any irregularities found upon review of the borrower's reports submitted to FmHA.

VII. *Tenant Certifications.* Form FmHA 448–8, "Tenant Certification," need not be required of tenants who have executed Form HUD 52659, "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

Memorandum of Understanding on Use of Section 8 of the U S Housing Act of 1937 and Section 515 of the Housing Act of 1949

I. Introduction

For the purpose of encouraging and facilitating the use of assistance under Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949, as amended, to provide newly constructed housing for lower-income families in rural areas, the Department of Agriculture [hereinafter referred to as the Farmers Home Administration (FmHA)] and the Department of Housing and Urban Development (HUD) hereby agree to the policies, procedures and joint working arrangements set forth in this Memorandum. The Secretary of each Department will expedite all necessary actions to implement this memorandum.

II. Property Standards

FmHA agrees that any Section 515 Rural Rental Housing Project to be assisted by the Section 8 Housing-Assistance Payments Program pursuant to this Memorandum will be in accord with HUD Minimum Property Standards (7 CFR 1804.3) and appropriate State and local laws, codes, ordinances and regulations.

III. Contract and Fair Market Rents

A. FmHA agrees to provide interest credit on any newly constructed Section 515 project to be assisted by Section 8 housing assistance payments. The effective interest rate applicable to the Section 8 units will be reduced by at least one percentage point below the FmHA interest rate in effect for Section 515 loans at the time of loan closing. The requirement that an interest credit be provided shall not apply to projects approved after the effective date of this paragraph and which are operated on a profit basis as defined by FmHA regulations.

B. HUD agrees to accept FmHA certification on a project-by-project basis that Contract Rents are reasonable based on the quality, location, amenities and management and maintenance services to be provided and do not exceed the applicable Fair Market Rents for newly constructed Section 8 units. HUD will provide the FmHA State Directors, on request with the current applicable Fair Market Rents for newly constructed Section 8 units as published in the Federal Register and in effect at the time the certification is made.

C. HUD agrees to provide the FmHA State Director on request with the current income limits for determining eligibility for the Section 8 program.

IV. Site and Neighborhood Standards

The site (location) and neighborhood standards to be set forth in the revised FmHA regulations which have been agreed to by HUD and FmHA shall be applicable to all newly constructed Section 515 projects to be assisted by Section 8 housing assistance payments. HUD agrees to accept FmHA's certification as to complaince with such standards on a project-by-project basis.

V. Equal Opportunity Requirements

A. FmHA agrees to assure compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968 and will issue regulations pursuant thereto.

B. HUD agrees to accept certification from FmHA that projects approved by FmHA will be developed and operated in accordance with the provisions of paragraph V (A) above.

VI. Environmental Standards

A. HUD and FmHA have issued regulations to implement the National Environmental Policy Act (NEPA) in accordance with guidelines issued by the Council on Environmental Quality (CEQ). HUD and FmHA agree to discuss their environmental regulations, procedures and forms to achieve uniform thresholds and forms.

B. FmHA shall comply with NEPA and all rules, regulations and requirements issued by FmHA pursuant thereto including:

1. Environmental assessments will be made for such projects with five or more units.

2. The suitability and effect of the existing environment will be considered for each project for which an assessment is required, as well as the impacts that would result from a project approval;

3. Proposals shall be rejected if, after appropriate modifications to be a proposal, there would remain environmental impacts which are unacceptable under NEPA and FmHA policies.

C. HUD agrees to accept the certification that sites approved by FmHA are in accordance with the provisions of paragraph VI (B) above.

VII. Relocation

In the case of a Public Housing Agency (PHA)-Owner project which is to be constructed on a site which has occupants, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be met.

VIII. Davis-Bacon Wage Rates

A. FmHA agrees to assure that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any new construction projects with nine or more assisted units.

B. HUD agrees to accept a certification on a project-by-project basis from FmHA that there will be complaince with the provisions of paragraph VIII (A) above.

IX. Other Federal Requirements

FmHA agrees to comply with the following requirements:

1. Clean Air and Federal Water Pollution Control Act and all rules and regulations and requirements issued by FmHA pursuant thereto.

2. The National Historic Preservation Act (Pub. L. 93–291) and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

X. Distribution of Housing Assistance Funds

A. Housing assistance funds shall be allocated by HUD in accordance with the requirements of Section 213(d)(1) of the Housing and Community Development (HCD) Act of 19874 and HUD regulations pursuant thereto.

B. The HUD field office director, in planning the utilization of housing assistance funds in accordance with the Section 213(d)(1) factors, shall consult with the appropriate FmHA State Director(s) in order that the use of the housing assistance funds be coordinated as nearly as possible with FmHA Section 515 activities.

C. HUD agrees to make a set-aside during Fiscal Year 1976, including the transition quarter, sufficient Section 8 contract authority to assist not less than 4,000 newly constructed dwelling units to be financed by the FmHA under the Section 515 rural rental housing program. Subject to congressional authorization of contract authority, HUD agrees to make a set-aside of such assistance for not less than 10,000 units in subsequent fiscal years.

D. To the extent any Section 8 housing assistance funds set-aside for use with Section 515 projects are not committed to such projects 45 days prior to the end of any fiscal year, HUD may withdraw and redistribute such funds except that HUD will not withdraw any Section 8 funds which FmHA advises HUD will be committed before the end of the fiscal year. Funds shall be deemed to be committed for such projects after receipt and review by HUD of the Form AD–621 (Preapplication for Federal Assistance) and the verification by HUD's Regional Accounting Division of the availability of funds.

XI. Basic Processing

A. When FmHA has a completed Form AD–621 (Preapplication for Federal Assistance) for a Section 515 project for which a commitment for Section 8 assistance is desired, it shall transmit a copy of the completed form and all completed attachments with a covering letter stating that Section 8 is desired. Upon receipt thereof, the HUD field office director shall initiate reviews under Section 213 of the HCD Act, all reviews to establish acceptability under HUD's previous participation requirements, and any reviews necessary to establish consistency with the Section 8 requirements. HUD shall indicate to FmHA any negative information on the proposed project as submitted, the availability of funds and that funding is contingent upon compliance with Section 213 requirements and clearance under the previous participation requirements.

B. Such reports as may be deemed necessary by HUD and FmHA concerning Section 8/Section 515 projects will be provided to HUD.

XII. Execution of Agreement To Enter Into Housing Assistance Payments Contract and Housing Assistance Payments Contract

A. HUD will prepare an Agreement to Enter Into a Housing Assistance Payments Contract for execution by the owner only after receipt of certifications on a project-by-project basis by FmHA. The certifications to be submitted by this time are as specified in paragraphs III(B), IV, V(B), VI(C) and VIII(B).

B. HUD will prepare a Housing Assistance Payments Contract for execution by HUD and the owner after the project is completed and FmHA submits on a project-by-project basis, certifications that:

1. The project was completed in accordance with the requirements of the Agreement to Enter Into Housing Assistance Payments Contract.

2. The project is in good and tenantable condition.

3. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

4. There has been no change in management capability.

C. If HUD has any information or other substantial reason to question the correctness of any FmHA certification, HUD shall promptly bring the matter to the attention of FmHA and FmHA shall advise HUD of its final determination in the matter.

XIII. HUD Review Responsibilities

A. FmHA assumes no responsibility for assuring compliance by the owner with the terms of the Housing Assistance Payments (HAP) Contract. FmHA and HUD agree to attempt to work out procedures for FmHA to assume responsibility for Housing Assistance Payments Contract compliance for Private-Owner and Public Housing Agency Owner-projects.

B. It is understood that to carry out its responsibilities for the administration of the Section 8 program, HUD may audit and review FmHA Section 8 related activities for compliance with outstanding HUD requirements covered by the provisions of this Memorandum of Understanding.

XIV. Interdepartmental Task Force

FmHA and HUD agree to the establishment of an interdepartmental task force, consisting of Headquarters and field office personnel, which will periodically, and as needed, convene for the purpose of reviewing program issues and recommending solutions thereto to assure the effective coordination of the Section 8 and Section 515 in areas served by the FmHA.

XV. Training

FmHA and HUD agree to make available appropriate personnel to carry out any interdepartmental training that may be necessary to implement an effective combination of the Section 8 and Section 515 programs.

Secretary of Agriculture.
Date _____

Secretary of Housing and Urban Development.
Date _____

Section 8 Housing Assistance Payments Program: Information and for New Construction

The Section 8 Housing Assistance Payments Program was authorized by the United States Housing Act of 1937 as amended by Section 201 of the Housing and Community Development Act of 1974.

Basic Concept

The Department of Housing Urban Development (HUD) will provide housing assistance payments on behalf of eligible lower-income households (i.e. households whose income does not exceed 80 percent of median income for the locality) occupying newly construction housing. This payment will make up the difference between the approved rent for the unit and the amount the household is required to pay which is not less than 15 percent nor more than 25 percent of the household's adjusted income.

New Construction and Substantial Rehabilitation

Who May Participate

Housing projects may be owned by private owners, both profit-motivated and nonprofit, and by public housing agencies.

How Do They Participate

Applicants will submit required data to Farmers Home Administration (FmHA) County or District Offices. If both the preliminary and final data submitted is acceptable to FmHa and HUD, HUD will enter into an agreement that upon completion of the project, it will enter into a Housing Assistance Payments Contract with the owner for a specified term. Under this Contract, HUD will make housing assistance payments with respect to units occupied by eligible households.

Initial Maximum Rents to Owners

The rents approved under the Contract (Contract Rents) may not exceed the HUD established Fair Market Rents for new construction for the housing market area in which the project will be located, and must be reasonable in relation to the quality, location, amenities, and the management and maintenance services provided by the owner.

Rent Adjustments

Contract rents to the owner will be adjusted annually by the HUD established Automatic Annual Adjustment Factor. Special additional adjustments may be approved to reflect actual and necessary expenses of owning and maintaining the project which have resulted from substantial general increases in real property taxes, utility rates or similar cost (i.e., assessments and utilities not covered by regulated rates), but only to the extent that such general increases are not compensated for the Automatic Annual Adjustments.

Term of Housing Assistance Payments Contract

The maximum term for the Contract is 20 years, or 40 years in the case of a project owned by a State or local agency. The criteria for determining the actual term are stated in the respective HUD regulations.

Responsibilities of the Owner

The owner will be responsible for performance of all maintenance and management functions (including taking of applications, selection of households, collection of rents, termination of tenancies, reexamination of household income and compliance with equal opportunity requirements). In connection with selection of families, the owner is responsible for leasing at least 30 percent of the units to Very Low-Income households (i.e., households whose income does not exceed 50 percent of the median income for the locality). The owner may contract with another entity to perform such services provided the management contract will not shift any of the owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (i.e., a PHA in the case of a Private-Owner/PHA project) may contract to perform such services.

Suggested Proposal Certification Format

(Section 8/515 Program)

(Date)
To: (HUD Field Office Manager)
(Address)
Subject: (Name of Project), (HUD Project Number), (Project Address: Street, Municipality, State), (Owner Name and Address)

This is to certify that:

(1) I have determined the Contract Rents to be reasonable based on the quality, location, amendities an management and maintenance services to be provided, and are based a —— percent interest reduction(s) that would otherwise be applicable to the Contract Units:

Type of unit	Size	Number of contract units	Contract rent	Allowance for utilities	Gross rent
(Detached, semi-detached, row, walk-up, elevator).	(Number of bedrooms)____	_____	$_____	$_____	$_____

If the Gross Rents are above the applicable Fair Market Rent, the cost and budget analysis and data are attached.

(2) I have determined that the site complies with the Farmers Home Administration site and neighborhood standards published at 7 CFR 1944.215 (q).

(3) I have determined that the Owner has certified that the project will be developed and operated in accordance with Title VI of the Civil Rights Act of 1974; Title VIII of the Civil Rights Act of 1968; Executive Orders 11063 and 11246; and Section 8 of the Housing and Urban Development Act of 1968.

(4) I have determined that the site is approved on the basis of the FmHA environmental rules, regulations and requirement, and the following additional precedures were used in determining the approvability of the site:

1. Environmental assessments were made for projects with 5 or more units;

2. The suitability and effect of the existing environment was considered for each project for which an assessement is required, as well as the impacts that would result from a project approval.

(5) I have determined that the Owner will pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), to all laborers and mechanics employed in the development of any new construction project with nine or more assisted units.

(Signature of State Director)

Equal Opportunity Site and Neighborhood Standards Checklist

1. Is the site located in an area of minority concentration? [1] [ ] Yes [ ] No

2. If answer to question 1 is Yes, do sufficient and comparable housing opportunities exist outside the minority area for minority households in the income range to be served by the proposed project? [ ] Yes [ ] No.

3. If Yes, the project can be approved.

4. If no, has a fully documented justification acceptable to the the reviewer been presented that the project at the proposed site is necessary to meet overriding housing needs which cannot otherwise be met in the market area? [ ] Yes [ ] No

5. If yes, the reviewer may approve the site, noting in writing the reasons for approval.

6. If answer to number 1 is No, is site located in a racially mixed area? [ ] Yes [ ] No

7. If answer to question number 6 is Yes, will the effect of locating the proposed project in this area be such as to increase significantly the number of minority to nonminority households by fostering a change to predominately minority residency in the area? [ ] Yes [ ] No

8. If answer to number 7 is Yes, disapprove the site.

9. If answer to number 7 is No, the site is acceptable.

[1] An area of minority concentration is defined as any part of a community adjacent to or within the confines of a greater area such as a place, town, village or city, in which the majority of residents are minority.

Certification by the Applicant

I/We, the undersigned, understand that as a condition of obtaining assistance under the HUD section 8 program in connection with section 515 rural rental housing loan from the Farmers Home Administration, that I/we are required to carry out the applicable provisions of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701U, the Davis-Bacon Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and the requirements of the Clean Air and Water Pollution Control Acts. I/We hereby certify that these provisions will be carried out in accordance with applicable regulations."

Name of Applicant.
Date: ———
By: ———
Date: ———
By: ———

Exhibit H–6

Guide Letter for Architect's Certification New Construction Inspecting Architect's Certification

This certification applies to the project developed for (name of owner), (address of owner), located at (street address), (city), (county), (state)

I, ———, Registered Architect, to the best of my knowledge, belief and professional judgment, do hereby certify, for the purpose of satisfying FmHA requirements with respect to the subject project, that:

(1) I was responsible for the inspection of construction of the subject project consisting principally of

———
———
———[1]

In accordance with Working Drawings and Specifications identified as ———[2], which were the subject of a previous certification to FmHA by the Design Architect;

(2) Inspections were performed by me or under my supervision with frequency and thoroughness requried by the generally accepted standards of professional care and judgement;

(3) The project has been completed in conformance with the certified Working Drawings and Specifications for the project or approved changes thereto;

(4) The project is in good and tenantable condition;

(5) There are no defects or deficiencies in the project except for ordinary punchlist items or incomplete work awaiting seasonal opportunity;

(6) The project has been constructed in accordance with applicable State and local laws, zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials.

Changes in the Working Drawings and Specifications were approved as listed in attachment: ———[3].

Punchlist or incomplete items are listed in attachment: ———[3].

Waivers of codes, etc., were obtained as listed in attachment: ———[3].

Signed ———
Architect ———
Business address ———
Telephone ———
License number ———
Date ———

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes of uses a document containing any false, fictitious, or fradulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both.

[1] List number and type of units, describe property, etc.

[2] Identify Drawings and Specifications including information normally found in the Title Block of drawings.

[3] Identify attachment.

Exhibit H–7

Suggested Project Completion Certification Format (Section 8/515 Program)

(Date) ———

To: (HUD Field Office Manager) (Address)
Subject: (Project Name) (HUD Project Number)
This to certify that:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenantable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in management capability.

(Signature of State Director)

Exhibit I.—Memorandum of Understanding Between Farmers Home Administration And Administration on Aging

A. *Introduction*

The lack of adequate, affordable housing is a serious problem for the elderly, particularly those who live in nonmetropolitan areas. Data indicate that 44 percent of the substandard housing in rural America is occupied by persons 60 years of age and older. Moreover, at least 60 percent of older persons living in rural communities occupy homes that were built prior to 1920.

The housing requirements for older persons are significantly different than those for the rest of the population, due to the progressive limitations of their mobility and physical capabilities over time. This creates seemingly contradictory needs and demands, with the progressive need for medical and support services vying with the ability to maintain an active life. Congregate housing is an alternative for the elderly who need an assisted residential living environment. It offers the functionally impaired or socially deprived but not ill elderly residential accommodations with supporting services to assist them in maintaining or returning to an independent or semi-independent life style and prevent premature or unnecessary institutionalization as they grow older.

In light of this, the Farmers Home Administration (FmHA) of the U.S.

Department of Agriculture and the Administration on Aging (AOA) of the U.S. Department of Health, Education, and Welfare have joined forces to enhance the quality of housing provided for the rural elderly.

B. *Objectives*

The Memorandum of Understanding encourages and fosters coordinated efforts between FmHA and AOA to meet these objectives:

1. To support a joint demonstration to establish in several selected communities model congregate housing facilities for the elderly with adequate supportive services. Some of the services provided the occupants will also be available for other elderly persons residing in the community.

2. To ensure the participation of local FmHA and AOA counterparts as well as the developers and community representatives in the planning, development, and implementation of the model congregate housing and related facilities.

3. To encourage the provision and expansion of outreach and information and referral services in the selected rural communities to inform older residents of this and other FmHA programs from which they may benefit.

4. To encourage the replication of this effort in other rural communities throughout the country.

C. *Relevant Programs Administered by FmHA*

FmHA administers several programs which can benefit senior citizens (By FmHA definition, persons 62 years of age or over and, in the case of a married couple, only one of whom must be 62 years of age or over).

Under Section 515 of the Housing Act of 1949 as amended, loans for rental housing in rural areas are available to individuals and various types of organizations to provide living units for eligible persons, including the elderly. The Congregate Housing for the Elderly Program is a new use of the Section 515 Rural Rental Housing Loan Program.

Other pertinent FmHA programs from which the elderly may benefit are listed below. All programs are authorized under the Housing Act of 1949 as amended.

1. Section 502, Rural Housing Loans, which may be made available to individuals to buy, build, rehabilitate, improve, or relocate a dwelling and related facilities to be used as permanent residence. The regulations for this program are being revised to allow the addition of a separate independent living unit to be added onto the family dwelling for senior relatives of the immediate family. It is expected that the regulations will be available by June 1979.

2. Section 504, Home Repair Programs, under which low-interest loans and/or grants may be made to owner-occupants who because of inadequate income do not qualify for Section 502 loans to enable them to make basic repairs to their dwellings or to make such dwellings safe and sanitary.

3. Sections 523 and 524, Rural Housing Site Loans, which may be made for the purchase of land and development of building sites for housing.

D. *Relevant Programs Administered by the Administration on Aging*

Under the authority of the Older Americans Act of 1965, as amended, programs administered by AOA are designed to foster the development of comprehensive and coordinated service systems which promote independence and reduce the need for institutionalization among the elderly. State and Area Agencies on Aging have major responsibilities in the areas of planning, management, and serve as focal points for all matters pertaining to older persons in the State and community. Funds are awarded to State and Area Agencies on Aging to enable them to enter into cooperative arrangements with other agencies and providers of social services to remove individual and social barriers to economic and personal independence for older persons.

In its assigned role as focal point of all aging-relating activities at the Federal level, the Administration on Aging is currently directing its efforts in new directions to begin to develop comprehensive community-based service systems in areas throughout the country to meet the needs of the Nation's older population. In order to successfully establish the proposed comprehensive community-based service systems to serve older person, most services, including housing, need to be developed, expanded, or improved in local communities, particularly in rural communities.

Under the new amendments to the Older Americans Act, enacted in October 1978, previous Titles III, V, and VII have been consolidated under one Title III. The new Title III provides for the planning and development of comprehensive and coordinated service systems, authorizing funding and providing for one administrative structure of three key service areas—social service, nutrition services, and senior centers.

Under the new amendments, no State receives less than that received in Fiscal Year 1978. Provisions have been made in the Act, however, to address the special needs of the rural elderly including that provision under Section 307 which requires States to increase their allocations to rural areas by 5 percent.

E. *Joint Demonstration Effort*

The Farmers Home Administration, under the authority of Section 515 of the Housing Act of 1949, as amended, is implementing its Congregate Housing for the Elderly Program. In doing so, a demonstration effort is being proposed to develop, in six diversified rural areas, model congregate housing projects for older persons with FmHA funds being used to construct the facilities and AOA funds being used to support the service components of those facilities.

F. *FmHA*

FmHA is earmarking for Fiscal Year 1979 a total of $6.0 million for the construction of model congregate housing facilities in six (6) rural areas.

G. *Criteria for Site Selection*

In selecting the sites for demonstration purposes, priority will be given to those areas which meet the following minimum criteria:

1. Areas that provide a diversity of racial and ethnic composition or low-income elderly.

2. Areas with a significant number of persons 62 years of age and older who need and want to occupy rural housing.

3. Areas that are representative of diverse rural communities.

4. Areas known to have poor housing facilities for the elderly.

5. Areas where planning and service areas are or can be covered by Area Agencies on Aging.

6. Areas accessible to central services, that is, shopping, medical facilities, transportation assistance.

7. Areas where State and local officials understand and support the intent and objectives of the joint demonstration program.

8. Areas where there are no other resources to support such an effort.

9. Areas where water and sewer facilities are available.

H. *AOA*

AOA is reserving grants in the amount of $500,000 for each year of the 3-year demonstration period beginning in FY 1979. These nonrenewable grants will be provided for the following purposes:

1. To support a full-time Project Director for each site to ensure the successful implementation of this effort. (The Project Director would be selected by the Area Agency on Aging, using as a guide the criteria appearing in this agreement and would be considered a member of the Area Agency Staff.) Such a position is expected to attract persons with some experience in neighborhood organization and community development and with some degree of knowledge and experience in working with aging and housing programs, rural populations, and ethnic and low-income groups. The duties of the Project Director would include:

a. Seeking the support of community leaders to assure the availability of appropriate and necessary supportive services at the housing site both during the demonstrations period and to seek such continued support beyond the demonstration period.

b. Initiating outreach efforts to identify potential residents.

c. Conducting a needs assessment survey to identify the housing and housing-related needs for the elderly living in the community.

d. Working with developers through FmHA to assure that the physical design of the congregate structure reflects the needs of the potential residents.

e. Arranging for provision of supportive services which, at a minimum, would include: (1) meal service-full or partial; (2) housekeeping elements for those unable to perform these responsibilities; (3) personal care and service for those who need assistance in daily care; (4) transportation and other areas to essential srvices; and (5) social and recreational activities.

f. Serving as a resource housing specialist for older persons in the community.

2. To assist in supporting the cost of gap-filling services based on the availability of local resources.

I. *Modification/Cancellation Provision*

Request for modifications and amendments to the Memorandum of Understanding may be initiated by either party. Such modifications or amendments will only be effective upon mutual agreement by both parties.

Signatures

Dated: January 22, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

Dated: January 23, 1979.

Alex P. Mercure,

Assistant Secretary for Rural Development.

Dated: January 26, 1979.

Bob Bergland,

Secretary of Agriculture.

Dated: January 26, 1979.

Robert Benedict,

Commissioner, Administration on Aging.

Dated: January 26, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Dated: January 30, 1979.

Patricia Harris,

Secretary of Health, Education, and Welfare.

Exhibit J

Loan Resolution of ———, 19—

(RRH Loan to Broadly Based Nonprofit Corporation)

Resolution of the Board of Directors of ——— providing for borrowing $——— to finance rental housing and related facilities in a rural area for ——— (Insert: Senior Citizens, Handicapped ———, the collection, persons or households of low or moderate income as appropriate), the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas ——— (herein referred to as the "Corporation") is a nonprofit corporation duly organized and operating under ——— (authorizing State statute).

The Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Be It resolved:

1. *Application for Loan:* The Corporation shall apply for and obtain a loan (herein called "the loan") of $——— from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture (herein called "the Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which the loan is approved by the Government, in order to provide rental housing and related facilities for eligible occupants as defined by the Government. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with installments over a period of ——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note and any supplemental agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation and containing other terms and conditions prescribed by the Government.

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) Any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement" including an FmHA 400-4 entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act 1964), "a copy of which is attached hereto and made a part hereof, and any other untertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds by the Corporation shall be made only on statements and partial payment estimates signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $——— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the obligations. Withdrawals from supervised bank account by the Corporation shall be made only on checks signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account; an Operation and Maintenance Account; a Debt Service Account; and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Corporation shall, from its own funds or from funds loaned by the Farmers Home Administration for this purpose, deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and

Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes; insurance, and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7 or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and, until so used, shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursement from the Reserve Account, to restore its said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum to be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow and money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole and exclusive discretion.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any prosivion of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security, and may enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval waiver, or agreement must be in writing.

(e) The resolution may be cited in the security instrument and any other instruments or agreements as the "Loan Resolution of ——— (date of this resolution), 19—.

The undersigned, ———, the Secretary of the Corporation identified in the foregoing loan Resolution, hereby certifies that the

foregoing is a true copy of a resolution of the Board of Directors of the Corporation passed on ———, 19—, which has not been altered, amended, or repealed.

(Date)———

(Secretary) ———

[1] Only loan funds and borrower's funds to be used for an eligible loan purpose may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit K

Loan Resolution of———, 19—.

(RRH Insured Loan to Profit Type Corporation)

Resolution of the Board of Directors of———providing for borrowing $——— to finance rental housing and related facilities in a rural area for (insert senior citizens, handicapped persons or households of low or moderate income as appropriate)———, the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas——— (herein referred to as the "Corporation") is a corporation duly organized and operating under (authorizing State statute)———; the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Note.—The word "partner(s)" may be substituted for the word(s) "board" or "Board of Directors" and the word "partnership" may be substituted for the word "corporation" where appropriate. OGC should be requested to provide appropriate substitute language to delete the reference to a "corporate seal" in item 2 and "stockholders" in item 9(b)(5) when required.

Be it resolved:

1. *Application for Loan.* The Corporation shall apply for and obtain a loan (herein called "the loan") of $——— through the facilities of the United States of America acting through the Farmes Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its coporate seal affixed thereto, for the amount of the loan, payable in installments over a period of——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) Any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan; and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part hereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the depositeed funds or the interim loan funds by the Corporation shall be made only on statements and partial payment estimates signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $——— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America Shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Corporation shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the

Corporation in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings, and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings, and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be tranferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the corporation in trust for the Government as security therefor.

9. *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) to pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to stockholders or for any other purpose duly authorized by the board: *Provided,* That the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the reserve account.

10. *Regulatory Coventants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the

entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of (date of this resolution)————19—."

Certificate

The undersigned, ————, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ————, 19—, which has not been altered, amended, or repealed.

(Date)————

(Secretary) ————

(SEAL)

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit L

Loan Resolution of ———, 19—.

(RRH Insured Loan to Profit Type Corporation Operating on a Limited Profit Basis)

Resolution of the Board of Directors of ———— providing for borrowing $—— to finance rental housing and related facilities in a rural area for (insert: Senior citizens, handicapped persons or households of low or moderate income as appropriate) ————, the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas ———— (herein referred to as the "Corporation") is a corporation duly organized and operating under (authorizing State statute) ————, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfull:

Note.—The word "partner(s)" may be substituted for the word(s) "board" or "Board of Directors" and the word "partnership" may be substituted for the word "corporation" where appropriate. OGC should be requested to provide appropriate substitute language to delete the reference to a "corporate seal" in item 2 and "stockholders" in term 9(b)(5) when required.

Be it resolved:

1. *Application for loan.* The Corporation shall apply for and obtain a loan (herein called "the loan") of $—— through the facilities of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by The Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $—— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construciton as required by the Government.[1] Funds deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Corporation shall be made only on statements and partial payment estimates signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $—— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of

the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to proclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Corporation shall from its own funds deposit in the General Fund Account the amount of $——. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* No later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $——[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $——[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequancy of the security, or will strengthen the security, or will facilities, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to stockholders or for any other purpose duly authorized by the board: *Provided, The board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.*

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the reserve account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fee, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of ——,[4] the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than —— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this resolution or the

bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of ———, 19—." (date of this resolution.)

Certificate

The undersigned, ———, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ———, 19—, which has not been altered, amended, or repealed.

———
(Date)

———
(Secretary)

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

[4] The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E, Part 1944.

Exhibit M

Loan Agreement (RRH Loan to a Limited Partnership)

1. *Parties and Terms Defined.* This agreement dated ——— of the ———, a Limited Partnership, duly organized and operating under (Authorizing State statute)———, herein called "Partnership," whose post office address is ———, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site is herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note signed by the general partner(s) for the amount of the loan, payable in installments over a period of ——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement by the Government, the general partner(s) are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. The general partner(s) are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or unsuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the contruction period/the proceeds of the note and the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9.

[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project, when all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

The general partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Partnership in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners or for any other purpose desired by the Partnership: *Provided,* The Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum to be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrower any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government.

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligation.

(j) Do other things as may be required by the Government in connection with the

operations of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully ad default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government intially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement" of (date of this agreement) ———, 19—.

Partnership Name

By:

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit N

Loan Agreement (RRH Loan to a Limited Partnership Operating on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated ——— of the ———, a Limited Partnership, duly organized and operating under (Authorizing State Statute) ——— herein called "Partnership," whose post office address is ———, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site is herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan, the Partnership shall issue a promissory note signed by general partner(s) for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement by the Government, the general partner(s) are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. The general partner(s) are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that inferim financing will be used during the construction period, the amount of $——— to be contributed by the Partnership from its own funds, and used for eligible loan purposes, shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts of the Government loan in the supervised bank account exceeding $40,000 shall be secured by the depository bank advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with the Government loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, and Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The general partner(s) shall execute a fidelity bond with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the

necessity for multiple advances of Farmers Home Administration loan funds whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and until so used shall be held by the Partnership in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payments of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan: Funds in the Debt Service Account shall be held by the Partnership in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgement of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners of up to 8% per annum of the borrowers initial investment of $———[4] provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will be likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remian unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $———,[4] the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenents.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnished the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover the handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Agree that if any provisions of its organization documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(f) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(g) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government—

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from, or chargeable to, any account provided for in this agreement.

(h) If required by the Government, modify and adjust any matters covered by clause (g) of this section.

(i) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(j) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership agrement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligation.

(k) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligation, or the security.

(11) *Refinancing the loan.* If at any time it appears to the Government that the

Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

(12) *General Provisions.* (a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of the agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provision of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of (date of this agreement) ——— 19—.

Partnership Name

By:

[1] Only loan funds and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most case figures should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

[4] The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

Exhibit O.—Loan Agreement (RRH Loan to a Partnership)

1. *Parties and Terms Defined.* This agreement dated ——— of the ———, a Partnership, duly organized and operating under (Authorizing State statute) ———, herein called "Partnership," whose post office address is ———, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) and 521 (a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note signed by all partners for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, all Partners are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. All partners are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period the proceeds of the note and the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. One or more general partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the

General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Partnership in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amont in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9 (a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9 (b) shall be transferred to the general fund account unless the Government directs said sum be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawl of partners nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing, or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement of the Partnership, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operations or affairs which may affect the housing, the loan obligation, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce

the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of (date of this agreement) ———, 19—.

Partnership name ———

By: ———

———

———

Loan Agreement (RRH Loan to a Partnership Operatng on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated ——— of the ———, a Partnership, duly organized and operating under (Authorizing State statute) ——— herein called "Partnership," whose post office address is ———, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note (herein referred to as "the note"), signed by all partners for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, all partners are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the partnership, and containing other terms and conditions prescribed by the Governement. All partners are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by the partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $——— to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. One or more of the partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the

project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners of up to 8 percent per annum of the borrower's initial investment of $———, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $———,[4] the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(f) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(g) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(h) If required by the Government, modify and adjust any matters covered by clause (g) of this section.

(i) Comply with all its agreements and obligations in or under the note, security instruments, and any related agreement executed by the Partnership in connection with the loan.

(j) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(k) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.* (a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the

Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the Security instrument and any other instruments as the "Loan Agreement of (date of this agreement) ————, 19—.

Partnership Name ————

By: ————

[1] Only loan funds and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most case figures should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

[4] The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

Exhibit Q

Loan Agreement—(RRH Insured Loan to Individual)

1. *Parties and Terms Defined.* This agreement dated ———— of the Undersigned ————, herein called "Borrower" whether one or more, whose post office address is ————, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of $———— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $———— to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Borrower's withdrawals of either the deposited funds or the interim loan funds shall be made only on statements and partial payment estimates signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $———— to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Borrower shall be made only on checks signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on the Borrower's books the following accounts, which shall be maintined so long as the loan obligations remain unsatisfied: A General Funds Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8(a).

5. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Borrower may also in the Borrower's discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Borrower in trust for the Government as security for the loan obligations.

6. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. *Debt Service Account.* each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt

Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Borrower in trust for the Government as security therefor.

8. *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Borrower in trust as security for the loan obligations. Transfers at a rate not less than $————[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $————[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by the Borrower, provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8 (a) and is not agreed between the Borrower and the Government to be used for the purposes authorized in subsection 8 (b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

9. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than ——— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements with occupants, and compensation to employees chargeable as operating expenses to employees of the housing project.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing the Loan.* If at any time it appears to the Government that the Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the government, the borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form by the Government initially.

(e) Any notice, consent, approval, waiver or agreement must be in writing.

(f) This resolution may be cited in the security instruments and any other instrument as the "Loan Agreement" of ————, 19——.

———————————
(date of this agreement)

———————————
Partnership name

———————————
Witness

———————————
Borrower

———————————
Witness

———————————
Borrower

[1] Only loan funds, and borrower's funds to be used for eligible loan purposes, may be deposited in the Supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Loan Agreement (RRH Loan to an Individual Operating on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated ——— of the Undersigned ————, herein called "Borrower" whether one or more, whose post office address is ————, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in

the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) and 521 (a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Borrower under the note evidencing the loan, the related security instrument and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupany of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached thereto and made a part hereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of $——— to be contributed by the Borrower from the Borrower's own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.[1] Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Borrower shall be made only on statements and partial payment estimates signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of $——— to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited in a "Supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Borrower shall be made only on checks signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on the Borrower's books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Funds Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8 (a).

5. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Borrower may also in the borrower's discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7 or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Borrower in trust for the Government as security for the loan obligations.

6. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Borrower in trust for the Government as security therefor.

8. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $———[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the Borrower of up to 8 percent per annum of the Borrower's initial investment of $———[4] provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not

fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8 (a) and is not agreed between the Borrower and the Government to be used for the purposes authorized in subsection 8 (b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

9. *Regulatory Convenants.* So long as the loan obligations remain unsatisfied, the Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of Borrower's initial investment of $———,[4] the Government may require that the Borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report; and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 6 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than —— days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements with occupants, and compensation to employees chargeable as operating expenses to employees of the housing project.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(g) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(h) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing the Loan.* If at any time it appears to the Government that the Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agrement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(e) This agreement may be cited in the security instrument and any other instrument as the Loan Agreement of

———, 19——.
(date of this agreement)

Borrower

[1] Only loan funds and Borrower's funds to be used for eligible loan purposes may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 4.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

[4] The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1901–G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190 an Environmental Impact Statements is not required.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria and is being published under emergency procedures, as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955, without a full 60-day comment period. It has been determined by Mr. L. D. Elwell, Assistant Administrator, Mutiple Family Housing, that an emergency situation exists which warrants less than a full 60-day comment period on this proposal. This action is taken in reply to findings and recommendations of the USDA Office of Inspector General which require that certain changes be made to the rural rental housing instruction as soon as possible in order to better protect the integrity of the program and to provide verification of proper use of federal funds more effectively to meet the needs of the primary benificiaries of the program. In addition, due to a reorganization of the Agency field staff, authorities must be made official to the individuals responsible for loan processing and review.

Dated: November 23, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-36767 Filed 11-29-79; 8:45 am]
BILLING CODE 3410-07-M

Friday
November 30, 1979

Part VI

Department of the Interior

Fish and Wildlife Service

Listing of Virginia and Ozark Big-Eared Bats as Endangered Species, and Critical Habitat Determination; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing of Virginia and Ozark Big-Eared Bats as Endangered Species, and Critical Habitat Determination

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) to be Endangered species, and determines five caves in West Virginia to be Critical Habitat for the Virginia big-eared bat. These bats have declined seriously in recent years, mainly because of human disturbance of their caves. This rule will extend to these bats the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1976, the Service was petitioned by Dr. John S. Hall (Professor of Biology, Albright College, Reading, Pennsylvania 19603) and Dr. Michael J. Harvey (Professor of Biology, Ecological Research Center, Memphis State University, Memphis, Tennessee 38152) to list the Virginia and Ozark big-eared bats as Endangered.

On the basis of that petition, and information subsequently received from the petitioners, regional offices of the Service, and other sources, the Virginia and Ozark big-eared bats were proposed for listing as Endangered on December 2, 1977 (42 FR 61290-61292). That proposal included designation of five caves in West Virginia and one in Kentucky as Critical Habitat for the Virginia big-eared bat but none for the Ozark big-eared bat. Before final action could be taken on the proposal, however, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. In order to bring the Critical Habitat part of the proposal into conformity with the Amendments, the Service reproposed Critical Habitat for the Virginia big-eared bat on August 30, 1979 (44 FR 51144-51145).

The reproposal of critical habitat provided for a public comment period extending until November 1, 1979. In addition, the Endangered Species Act requires that the Governor be allowed 90 days in which to respond to the proposal, unless he agrees to a shorter period. At the request of the Service, in order to facilitate issuance of the final rule prior to the deadline of December 2, 1979, now imposed by the Endangered Species Act, the Governor of West Virginia kindly agreed to waive the 90 day requirement, and provided a favorable response on October 23, 1979.

Summary of Comments and Recommendations

A total of 25 written comments was received in response to the original proposal of December 2, 1977. Of the responses, none flatly opposed the proposal, and 21 indicated support. The supporting respondents included the Governor of Oklahoma, Governor of Arkansas, Director of the Missouri Department of Conservation, Director of the Illinois Department of Conservation, Commissioner of the Kentucky Department of Natural Resources, Governor of West Virginia, Associate Deputy Chief of the U.S. Forest Service, Administrator of the U.S. Soil Conservation Service, and Chairman of the Chiroptera Group of the Survival Services Commission of the International Union for Conservation of Nature and Natural Resources.

Officials of the Departments of Natural Resources of Indiana, Ohio, and Maryland observed that the proposal of December 2, 1977, had included their States within the known distribution of the Virginia big-eared bat, when in fact there were no specific records of the species from these States. The Service was aware of the lack of records, but considered it advisable to mention the three States because of their proximity and the possibility that the species could occasionally appear therein. In this final rule the three States have been deleted from the known distribution, but the Service emphasizes that should a Virginia big-eared bat be found in Indiana, Ohio, or Maryland, it would be protected by the Endangered Species Act of 1973.

The Director of the Missouri Department of Conservation, and other respondents, suggested the designation of Critical Habitat for the Ozark as well as the Virginia big-eared bat. Although the Service did not subsequently propose Critical Habitat for this species for the reasons set out below, it requests additional pertinent data and will designate Critical Habitat later if the evidence warrants. In a letter dated January 3, 1978, the Commissioner of the Kentucky Department of Fish and Wildlife Resources, while supporting the listing of the Virginia big-eared bat, suggested that it would be advisable not to designate Stillhouse Cave in Lee County, Kentucky as Critical Habitat. This suggestion was based on the view that designating that cave as Critical Habitat would call attention to it, resulting in increased public use and disturbances to the bats. The Commission also noted that the present owners of the cave were insuring protection of the bats. The Service agreed with this suggestion and did not include Stillhouse Cave in the reproposal of Critical Habitat.

In response to the reproposal of Critical Habitat of August 30, 1979, there were 13 written comments and one statement at a public hearing held by the Service in Elkins, West Virginia on October 11, 1979. The 12 supporting respondents included the Governor of West Virginia and several biologists and speleologists, some of whom provided valuable data and suggestions for additional Critical Habitat or protective measures. The Director of the Kentucky Nature Preserves Commission, and two other persons, advocated that Stillhouse Cave in Lee County, Kentucky, which had been dropped from the reproposal, be designated as Critical Habitat. The Kentucky Nature Preserves Commission also suggested that other caves within the Cave Hollow System in Lee County, Kentucky be designated as Critical Habitat. The Service will review the data and propose further Critical Habitat within the near future, if the evidence warrants. In the meantime, the Service is unaware of any impending activity that would be detrimental to Stillhouse Cave and there is no indication that there will be any disadvantage to the bats therein because a Critical Habitat designation is not now being made.

Mr. Fred C. Western, Vice President of the Germany Valley Limestone Company, which has a quarrying operation in the vicinity of Hellhole Cave in Pendleton County, West Virginia, expressed opposition to the designation of this cave as Critical Habitat. Mr. Western's reason was that such designation could have a long term effect on the quarrying operation, but he also stated that the operation was not detrimental to the bats and that future expansion of the quarry would occur

away from the cave. A subsequent meeting between Mr. Western and Service personnel indicated that there apparently had been a misunderstanding regarding the meaning of a Critical habitat designation, that there was no known conflict between the quarrying operation and the interests of the bats, and that any future problems could be easily resolved. The Service also notes that Hellhole Cave has already been designated Critical Habitat for the Indiana bat, another Endangered species, and the requirements of both species are equivalent.

Conclusion

After review and consideration of all available information, the Service has determined that the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) are endangered species as defined by the Endangered Species Act of 1973. Section 4(a) of the Act states that the Secretary of the Interior shall determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to the Virginia and Ozark big-eared bats, are listed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both of these bats long have been restricted to relatively small areas, and are dependent on a few specific kinds of caves for hibernation and reproductive activity. Both are highly intolerant of human presence, and will readily abandon their roosts when disturbed.

The Virginia big-eared bat still is found in three separate populations, centered in eastern Kentucky, southwestern Virginia, and eastern West Virginia, but many caves within this region have been abandoned. In the last 18 years at least five wintering colonies have disappeared in West Virginia. Only three nursery colony caves are known to remain in this State, and numbers therein have declined considerably because of repeated disturbance by spelunkers and vandals. There are still about 2,500 to 3,000 bats in West Virginia, but their dependence on the few remaining nursery caves makes the entire population subject to rapid extermination under the wrong conditions. A serious decline also has occurred in the single known nursery colony in Kentucky, which now contains fewer than 500 bats. In the Virginia population not more than a few hundred individuals survive.

The Ozark big-eared bat is in an even worse situation. It is now found in only a few caves in northwestern Arkansas, southwestern Missouri, and eastern Oklahoma. Recent estimates indicate that the total surviving population numbers only about 100 to 200 individuals. The declining status of this bat has been recognized by State conservation biologists, Academicians, and spelunkers.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Some of these bats have been killed for fun. In addition, well-meaning biologists and spelunkers, observing the bats for scientific or educational purposes, have caused disturbances and subsequent population reductions because of the high sensitivity of these species.

3. *Disease or predation.* Not known to be applicable.

4. *The inadequacy of existing regulatory mechanisms.* These bats and their habitat are not currently under protection of Federal laws. State protective laws have not been successful in preventing the decline of these species.

5. *Other natural or manmade factors affecting its continued existence.* None in addition to those discussed above.

Critical Habitat

Subsection 4(a)(1) of the Act states:

> At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

As explained above in the Summary of Comments, the Service is not now designating one of the originally proposed Critical Habitat sites for the Virginia big-eared bat. Designation of Stillhouse cave would call public attention to it, resulting in increased public use and disturbances of the bats. The present owners of this cave have also acted to protect the bats.

The Service also believes that it would not be prudent to specify any Critical Habitat for the Ozark big-eared bat at this time. Critical Habitat was not specified for this bat either in this original proposal of December 2, 1977 or the reproposal of August 30, 1979. This bat is exceptionally rare and the few survivors are not known to make periodic use of any particular cave for hibernation or maternity purposes, appearing at entirely different sites in subsequent years. As a result, designation of any particular area may not have been beneficial to this species. However, the Service will continue to review the scientific evidence and will propose Critical Habitat in the future if warranted.

The Act defines Critical Habitat as:

> (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that five caves in West Virginia should be designated as Critical Habitat for the Virginia big-eared bat. Because of precise conditions of physical structure, temperature, and humidity, these caves are suitable for use by the species as sites for hibernation and reproduction. The species has a limited range and is highly susceptible to changes in its habitat. Even minor disturbance or physical changes in the caves occupied may result in extinction. Therefore, these caves are essential for its conservation. The physical and biological features of its habitat are such as to require special management considerations and protection.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.21 would apply to the Virginia and Ozark big-eared bats. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce these species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. Permits for scientific purposes or for the enhancement of propagation or survival would be available in accordance with 50 CFR 17.22. Economic hardship permits would be available under 50 CFR 17.23.

Section 7(a) of the Act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse mofification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation were published in the Federal Register on January 4, 1978 (43 FR 870–876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued requires Federal agencies to satisfy these statutory and regulatory obligations with respect to the Virginia and Ozark big-eared bats. These agencies now are required not only to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of these species, but also to insure that their actions do not result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompained by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the Virginia big-eared bat.

1. Any action which would substantially alter the physical structure, temperature, humidity, or air flow of the designated caves could adversely modify Critical Habitat, since the Virginia big-eared bat depends on the maintenance of precise conditions in these caves which it must use for hibernating sites in the winter and for nurseries in the summer.

2. Any action which would result in disturbance of the bats in their hibernating or nursery caves would adversely affect Critical Habitat since the species is highly intolerant of human disturbance. Such activity might include blasting or construction in or near the designated caves, or increasing human access to the caves.

Effect Internationally

The Service will review the status of the Virginia and Ozark big-eared bats to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention, and whether they should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (703/235–1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Act 12044 and 43 CFR Part 14.

Regulation Promulgation

Accordingly, Part 17, Subparts B and I, Title 50 of the Code of Federal Regulations are amended as set forth below:

1. Section 17.11 is amended by adding, in alphabetical order, the following to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion endangered			
Mammals:							
Bat, Ozark big-eared	*Plecotus town-sendii ingens*	NA	USA (Arkansas, Missouri, Oklahoma).	Entire	E		NA
Bat, Virginia big-eared	*Plecotus town-sendii virginianus*	NA	USA (Illinois, Kentucky, West Virginia, Virginia..	Entire	E		

2. Section 17.95(a) is amended by adding the following Critical Habitat description after the Critical Habitat description for the Indiana bat:

§ 17.95 Critical habitat—Fish and wildlife.

(a) *Mammals.*

* * * * *

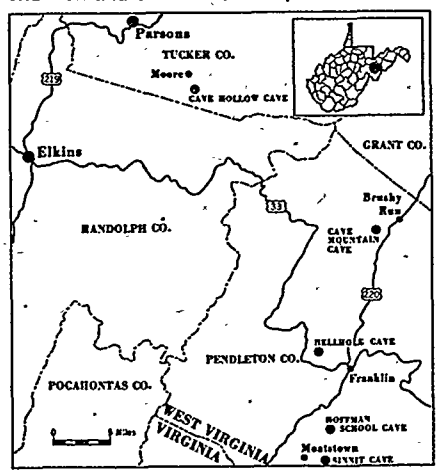
Virginia Big-eared Bat

(Plecotus townsendii virginianus)

West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

VIRGINIA BIG-EARED BAT

Pendleton and Tucker Counties, WEST VIRGINIA



Dated: November 26, 1979.

Roberty E. Gilmore,

Acting Director, Fish and Wildlife Service.

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Part VII

Department of Health, Education, and Welfare

National Institutes of Health

Recombinant DNA Advisory Committee, Meeting; Recombinant DNA Research, Proposed Guidelines and Actions

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice was previously given on November 1, 1979 (44 FR 63074) of a meeting of the Recombinant DNA Advisory Committee to be held on December 6-7, 1979. The agenda of that meeting is hereby amended to include discussion, in the event the Committee members so wish, of the material immediately following this notice, i.e., Decision Document/ Environmental Impact Assessment and Proposed Revised Guidelines for Research Involving Recombinant DNA Molecules.

Dated: November 26, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79-36840 Filed 11-29-79; 8:45 am]

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Proposed Guidelines for Research Involving Recombinant DNA Molecules

November 1979.

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I. Scope of the Guidelines

I-A. *Purpose.* The purpose of these Guidelines is to specify practices for constructing and handling (i) recombinant DNA molecules and (ii) organisms and viruses containing recombinant DNA molecules.

I-B. *Definition of Recombinant DNA Molecules.* In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

I-C. *General Applicability.* See Section IV-B.

I-D. *Prohibitions.* The following experiments are not to be initiated at the present time:

I-D-1. Formation of recombinant DNAs derived from the pathogenic organisms classified[1] as Class 3, 4, or 5 [2] or from cells known [2A] to be infected with such agents, regardless of the host-vector system used.

I-D-2. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxins potent for vertebrates [2A] (e.g., botulinum or diphtheria toxins; venoms from insects, snakes, etc.).

I-D-3. Deliberate creation by the use of recombinant DNA of a plant pathogen with increased virulence and host range beyond that which occurs by natural genetic exchange. [2A]

I-D-4. Deliberate release into the environment of any organism containing recombinant DNA.

I-D-5. Deliberate transfer of a drug resistance trait to micro-organisms that are not known to acquire it naturally, if such acquisition could compromise the use of a drug to control disease agents in

human or veterinary medicine or agriculture. [2A]

I–D–6. Large-scale experiments (e.g., more than 10 liters of culture) with organisms containing recombinant DNAs, unless the recombinant DNAs are rigorously characterized and the absence of harmful sequences established [3]. (See Section IV–E–1–b–(3)–(d).)

We differentiate between small- and large-scale experiments with organisms containing recombinant DNAs because the probability of escape from containment barriers normally increases with increasing scale.

Experiments in these categories may be excepted [4] from the prohibitions (and will at that time be assigned appropriate levels of physical and biological containment) provided that these experiments are expressly approved by the Director, NIH, with advice of the Recombinant DNA Advisory Committee after appropriate notice and opportunity for public comment. (See Section IV–E–1–b–(1)–(e).)

I–E. *Exemptions.* It must be emphasized that the following exemptions [4] are not meant to apply to experiments described in the Sections I–D–1 to I–D–5 as being prohibited.

The following recombinant DNA molecules are exempt from these Guidelines, and no registration with NIH is necessary:

I–E–1. Those that are not in organisms or viruses. [5]

I–E–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

I–E–3. Those that consist entirely of DNA from a prokaryotic host, including its indigenous plasmids or viruses, when propagated only in that host (or closely related strain of the same species) or when transferred to another host by well established physiological means; also those that consist entirely of DNA from a eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses), when propagated only in that host (or a closely related strain of the same species).

I–E–4. Certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment. (See Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

I–E–5. Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C. An updated list may be obtained from the Office of Recombinant DNA Activities; National Institutes of Health, Bethesda, Maryland, 20205.

I–F. *General Definitions.* See Section IV–C.

II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information therefore already exists for the design of physical containment facilities and the selection of laboratory procedures applicable to organisms carrying recombinant DNAs. [6–19] The existing programs rely upon mechanisms that, for convenience, can be divided into two categories: (i) a set of standard practices that are generally used in microbiological laboratories, and (ii) special procedures, equipment, and laboratory installations that provide physical barriers which are applied in varying degrees according to the estimated biohazard.

Experiments on recombinant DNAs, by their very nature, lend themselves to a third containment mechanism—namely, the application of highly specific biological barriers. In fact, natural barriers do exist which limit either (i) the infectivity of a *vector*, or *vehicle*, (plasmid or virus) for specific hosts or (ii) its dissemination and survival in the environment. The vectors that provide the means for replication of the recombinant DNAs and/or the host cells in which they replicate can be genetically designed to decrease by many orders of magnitude the probability of dissemination of recombinant DNAs outside the laboratory.

As these three means of containment are complementary, different levels of containment appropriate for experiments with different recombinants can be established by applying various combinations of the physical and biological barriers along with a constant use of the standard practices. We consider these categories of containment separately here in order that such combinations can be conveniently expressed in the Guidelines.

In constructing these Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. We recognize that these definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be carried out under different conditions than indicated here without affecting risk. Indeed, we urge that individual investigators devise simple and more effective containment procedures and that investigators and institutional biosafety committees recommend changes in the Guidelines to permit their use.

II–A. *Standard Practices and Training.* The first principle of containment is a strict adherence to good microbiological practices. [6–15] Consequently, all personnel directly or indirectly involved in experiments on recombinant DNAs must receive adequate instruction. (See Sections IV–D–1–g, IV–D–5–d, and IV–D–8–b.) This shall as a minimum include instructions in aseptic techniques and in the biology of the organisms used in the experiments, so that the potential biohazards can be understood and appreciated.

Any research group working with agents with a known or potential biohazard shall have an emergency plan which describes the procedures to be followed if an accident contaminates personnel or the environment. The principal investigator must ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan. (See Sections IV–D–5–e and IV–D–3–d.) If a research group is working with a known pathogen where there is an effective vaccine it should be made available to all workers. Where serological monitoring is clearly appropriate it shall be provided. (See Sections IV–D–1–h and IV–D–8–c.)

II–B. *Physical Containment Levels.* The objective of physical containment is to confine organisms containing recombinant DNA molecules, and thus to reduce the potential for exposure of the laboratory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is

achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment equipment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazard are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as P1, P2, P3, and P4, are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms. For example, the "Classification of Etiologic Agents on the Basis of Hazard," [7] prepared by the Center for Disease Control, describes four general levels which roughly correspond to our descriptions for P1, P2, P3, and P4; and the National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our P2, P3, and P4 levels.[8]

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide P3 and P4 levels of physical containment. The selection of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will also be given by the Director, NIH, with the advice of the Recombinant DNA Advisory Committee to other combinations which achieve an equivalent level of containment. (See Section IV-E-1-b-(2)-(b).) Additional material on physical containment for plant host-vector systems is found in Sections III-C-3 and III-C-4.

II-B-1. *P1 Level.*

II-B-a. *Laboratory Practices.*

II-B-1-a-(1). Laboratory doors shall be kept closed while experiments are in progress.

II-B-1-a-(2). Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

II-B-1-a-(3). All biological wastes shall be decontaminated before disposal. Other contaminated materials, such as glassware, animal cages, and laboratory equipment, shall be decontaminated before washing, reuse, or disposal.

II-B-1-a-(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II-B-1-a-(5). Eating, drinking, smoking, and storage of foods are not permitted in the laboratory area in which recombinant DNA materials are handled.

II-B-1-a-(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II-B-1-a-(7). Care shall be taken in the conduct of all procedures to minimize the creation of aerosols.

II-B-1-a-(8). Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II-B-1-a-(9). An insect and rodent control program shall be instituted.

II-B-1-a-(10). The use of laboratory gowns, coats, or uniforms is discretionary with the laboratory supervisor.

II-B-1-a-(11). Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

II-B-1-a-(12). The laboratory shall be kept neat and clean.

II-B-1-b. *Containment Equipment.* Special containment equipment is not required at the P1 level.

II-B-1-c. *Special Laboratory Design.* Special laboratory design is not required at the P1 level.

II-B-2. *P2 Level.*

II-B-2-a. *Laboratory Practices.*

II-B-2-a-(1). Laboratory doors shall be kept closed while experiments are in progress.

II-B-2-a-(2). Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

II-B-2-a-(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a means demonstrated to be effective before washing, reuse, or disposal.

II-B-2-a-(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II-B-2-a-(5). Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

II-B-2-a-(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II-B-2-a-(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II-B-2-a-(8). Contaminated materials that are to be steam sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II-B-2-a-(9). Only persons who have been advised of the nature of the research being conducted shall enter the laboratory.

II-B-2-a-(10). The universal biohazard sign shall be posted on all laboratory access doors when experiments requiring P2 containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

II-B-2-a-(11). An insect and rodent control program shall be instituted.

II-B-2-a-(12). The use of laboratory gowns, coats, or uniforms is required. Laboratory clothing shall not be worn to the lunch room or outside of the building in which the laboratory is located.

II-B-2-a-(13). Animals not related to the experiment shall not be permitted in the laboratory.

II-B-2-a-(14). Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

II-B-2-a-(15). The laboratory shall be kept neat and clean.

II-B-2-a-(16). Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

II-B-2-b. *Containment Equipment.* Biological safety cabinets[20] shall be used to contain aerosol-producing equipment, such as blenders, lyophilizers, sonicators, and centrifuges, when used to process organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol. For example, a centrifuge may be operated in the open if a sealed head or safety centrifuge cups are used.

II-B-2-c. *Special Laboratory Design.* An autoclave for sterilization of wastes

and contaminated materials shall be available in the same building in which organisms containing recombinant DNA molecules are used.

II–B–3. *P3 Level.*

II–B–3–a. *Laboratory Practices.*

II–B–3–a–(1). Laboratory doors shall be kept closed while experiments are in progress.

II–B–3–a–(2). Work surfaces shall be decontaminated following the completion of the experimental activity, and immediately following spills of organisms containing recombinant DNA molecules.

II–B–3–a–(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials, such as glassware, animal cages, laboratory equipment, and radioactive wastes, shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

II–B–3–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II–B–3–a–(5). Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

II–B–3–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II–B–3–a–(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II–B–3–a–(8). Contaminated materials that are to be steam-sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II–B–3–a–(9). Entry into the laboratory shall be through a controlled access area. Only persons who have been advised of the nature of the research being conducted shall enter the controlled access area. Only persons required on the basis of program or support needs shall be authorized to enter the laboratory. Such persons shall be advised of the nature of the research being conducted before entry, and shall comply with all required entry and exit procedures.

II–B–3–a–(10). Persons under 16 years of age shall not enter the laboratory.

II–B–3–a–(11). The universal biohazard sign shall be posted on the controlled access area door and on all laboratory doors when experiments requiring P3-level containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

II–B–3–a–(12). An insect and rodent control program shall be instituted.

II–B–3–a–(13). Laboratory clothing that protects street clothing (e.g., long-sleeve solid-front or wrap-around gowns, no-button or slipover jackets) shall be worn in the laboratory. Front-button laboratory coats are unsuitable. Laboratory clothing shall not be worn outside the laboratory and shall be decontaminated before it is sent to the laundry.

II–B–3–a–(14). Raincoats, overcoats, topcoats, coats, hats, caps, and such street outer-wear shall not be kept in the laboratory.

II–B–3–a–(15). Gloves shall be worn when handling materials requiring P3 containment. They shall be removed aseptically immediately after the handling procedure and decontaminated.

II–B–3–a–(16). Animals and plants not related to the experiment shall not be permitted in the laboratory.

II–B–3–a–(17). Vacuum outlets shall be protected by filter and liquid disinfectant traps.

II–B–3–a–(18). Use of hypodermic needle and syringe shall be avoided when alternative methods are available.

II–B–3–a–(19). The laboratory shall be kept neat and clean.

II–B–3–a–(20). If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring P3-level physical containment, they shall be conducted in accordance with all P3-level laboratory practices.

II–B–3–b. *Containment Equipment.*

II–B–3–b–(1). Biological safety cabinets[20] shall be used for all equipment and manipulations that produce aerosols—e.g., pipetting, dilutions, transfer operations, plating, flaming, grinding, blending, drying, sonicating, shaking, centrifuging—where these procedures involve organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol.

II–B–3–b–(2). Laboratory animals held in a P3 area shall be housed in partial-containment caging systems, such as Horsfall units[19A], open cages placed in ventilated enclosures, solid wall and bottom cages covered by filter bonnets, or solid wall and bottom cages placed on holding racks equipped with ultraviolet radiation lamps and reflectors. (Note: Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.)

II–B–3–b–(3). *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified in Part III can be conducted in the P3 laboratory using containment equipment specified for the P2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified in Part III can be conducted in the P3 laboratory using containment equipment specified for the P4 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

II–B–3–c. *Special Laboratory Design.*

II–B–3–c–(1). The laboratory shall be separated by a controlled access area from areas that are open to unrestricted traffic flow. A controlled access area is an anteroom, a change room, an air lock or any other double-door arrangement that separates the laboratory from areas open to unrestricted traffic flow.

II–B–3–c–(2). The surfaces of walls, floors, and ceilings shall be readily cleanable. Penetrations through these surfaces shall be sealed or capable of being sealed to facilitate space decontamination.

II–B–3–c–(3). A foot-, elbow-, or automatically-operated hand-washing facility shall be provided near each primary laboratory exit area.

II–B–3–c–(4). Windows in the labortory shall be sealed.

II–B–3–c–(5). An autoclave for sterilization of wastes and contaminated materials shall be available in the same building (and preferably within the controlled laboratory area) in which organisms containing recombinant DNA molecules are used.

II–B–3–c(6). The laboratory shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential (i.e. from the controlled access area to the laboratory area). If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be

Table I

COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment according to Guidelines		Alternate combinations of physical and biological containment			
		Physical Containment			
Physical containment	Biological* containment	Laboratory design specified for:	Laboratory practices specified for:	Containment equipment specified for:	Biological containment
P3	HV3	P3	P3	P3	HV3
P3	HV3	P3	P3	P4	HV2
P3	HV2	P3	P3	P3	HV2
P3	HV2	P3	P3	P2	HV3
P3	HV2	P3	P3	P4	HV1
P3	HV1	P3	P3	P3	HV1
P3	HV1	P3	P3	P2	HV2

*See Section II-D for description of biological containment.

equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the laboratory area shall not be recirculated to other areas of the building unless the exhaust air is filtered by HEPA filters or equivalent. The exhaust air from the laboratory area can be discharged to the outdoors without filtration or other means for effectively reducing an accidental aerosol burden provided that it can be dispersed clear of occupied buildings and air intakes.

II-B-3-c-(7). The treated exhaust-air from Class I and Class II biological safety cabinets [20] may be discharged either to the laboratory or to the outdoors. The treated exhaust-air from a Class III cabinet shall be discharged directly to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through a building exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinet and the building ventilation system.

II-B-4. *P4 Level.*

II-B-4-a. *Laboratory Practices.*

II-B-4-a-(1). Laboratory doors shall be kept closed while experiments are in progress.

II-B-4-a-(2). Work surfaces shall be decontaminated following the completion of the experimental activity and immediately following spills of organisms containing recombinant DNA molecules.

II-B-4-a-(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

II-B-4-a-(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II-B-4-a-(5). Eating, drinking, smoking, and storage of food are not permitted in the P4 facility.

II-B-4-a-(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II-B-4-a-(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II-B-4-a-(8). Biological materials to be removed from the P4 facility in a viable or intact state shall be transferred to a nonbreakable sealed container, which is then removed from the P4 facility through a pass-through disinfectant dunk tank or fumigation chamber.

II-B-4-a-(9). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the P4 facility unless they have been steam-sterilized (autoclaved) or decontaminated by a means demonstrated to be effective as they pass out of the P4 facility. All wastes and other materials as well as equipment not damaged by high temperature or steam shall be steam sterilized in the double-door autoclave of the P4 facility. Other materials which may be damaged by temperature or steam shall be removed from the P4 facility through a pass-through fumigation chamber.

II-B-4-a-(10). Materials within the Class III cabinets shall be removed from the cabinet system only after being steam-sterilized in an attached double-door autoclave or after being contained in a nonbreakable sealed container,which is then passed through a disinfectant dunk tank or a fumigation chamber.

II-B-4-a-(11). Only persons whose entry into the P4 facility is required to meet program or support needs shall be authorized to enter. Before entering, such persons shall be advised of the nature of the research being conducted and shall be instructed as to the appropriate safeguards to ensure their safety. They shall comply with

instructions and all other required procedures.

II-B-4-a-(12). Persons under 18 years of age shall not enter the P4 facility.

II-B-4-a-(13). Personnel shall enter into and exit from the P4 facility only through the clothing change and shower rooms. Personnel shall shower at each egress from the P4 facility. Air locks shall not be used for personnel entry or exit except for emergencies.

II-B-4-a-(14). Street clothing shall be removed in the outer side of the clothing-change area and kept there. Complete laboratory clothing, including undergarments, head cover, shoes, and either pants and shirts or jumpsuits, shall be used by all persons who enter the P4 facility. Upon exit, personnel shall store this clothing in lockers provided for this purpose or discard it into collection hampers before entering the shower area.

II-B-4-a-(15). The universal biohazard sign is required on the P4 facility access doors and on all interior doors to individual laboratory rooms where experiments are conducted. The sign shall also be posted on freezers, refrigerators, or other units used to store organisms containing recombinant DNA molecules.

II-B-4-a-(16). An insect and rodent control program shall be instituted.

II-B-4-a-(17). Animals and plants not related to the experiment shall not be permitted in the laboratory in which the experiment is being conducted.

II-B-4-a-(18). Vacuum outlets shall be protected by filter and liquid disinfectant traps.

II-B-4-a-(19). Use of the hypodermic needle and syringe shall be avoided when alternate methods are available.

II-B-4-a-(20). The laboratory shall be kept neat and clean.

II-B-4-a-(21). If experiments involving other organisms which require lower levels of containment are to be conducted in the P4 facility concurrently with experiments requiring P4-level containment, they shall be conducted in accordance with all P4-level laboratory practices specified in this section.

II-B-4-b. *Containment Equipment.*

II-B-4-b-(1). Experimental procedures involving organism that require P4-level physical containment shall be conducted either in (i) a Class III cabinet system or in (ii) Class I or Class II cabinets that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure isolation suits.

II-B-4-b-(2). Laboratory animals involved in experiments requiring P4-level physical containment shall be housed either in caged contained in Class III cabinets or in partial-containment caging systems (such as Horsfall units [19A], open cages placed in ventilated enclosures, or solid wall and bottom cages covered by filter bonnets, or solid wall and bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors) that are located in a specially designed areas in which all personnel are required to wear one-piece positive-pressure suits.

II-B-4-b-(3). *Alternative Selective of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified in Part III can be conducted in the P4 facility using containment equipment requirements specified for the P3 level of physical containment. Alternative combinations of containment safequards are shown in Table II.

Table II

COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment according to Guidelines		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological* containment	Laboratory design specified for:	Laboratory practices specified for:	Containment equipment specified for:	Biological containment
P4	HV1	P4	P4	P4	HV1
P4	HV1	P4	P4**	P3	HV2

* See Section II-D for description of biological containment.
** In this case gloves shall be worn, in addition to the clothing requirements specified in II-B-4-a-(14).

II-B-4-c. *Special Laboratory Design.*

II-B-4-c-(1). The laboratory shall be located in a restricted-access facility which is either a separate building or a clearly demarcated and isolated zone within a building. Clothing-change areas and shower rooms shall be provided for personnel entry and egress. These rooms shall be arranged so that personnel leave through the shower area to the change room. A double-door ventilated vestibule or ultratviolet air lock shall be provided for passage of materials, supplies, and equipment which are not brought into the P4 facility through the change room area.

II-B-4-c-(2). Walls, floors, and ceilings of the P4 facility are constructed to form an internal shell which readily allows vapor-phase decontamination and is animal- and insect-proof. All penetrations through these structures and surfaces are sealed. (The integrity of the walls, floors, ceilings, and penetration seals should ensure adequate containment of a vapor-phase decontaminant under static pressure conditions. This requirement does not imply that these surfaces must be airtight.)

II-B-4-c-(3). A foot-, elbow-, or automatically-operated handwashing facility shall be provided near the door

within each laboratory in which experiments involving recombinant DNA are conducted in openface biological safety cabinets.

II–B–4–c–(4). Central vacuum systems are permitted. The system, if provided, shall not serve areas outside the P4 facility. The vacuum system shall include in-line HEPA filters near each use point or service cock. The filters shall be installed so as to permit in-place decontamination and replacement. Water supply and liquid and gaseous services provided to the P4 facility shall be protected by devices that prevent backflow.

II–B–4–c–(5). Drinking water fountains shall not be installed in laboratory or animal rooms of the P4 facility. Foot-operated water fountains are permitted in the corridors of the P4 facility. The water service provided to such fountains shall be protected from the water services to the laboratory areas of the P4 facility.

II–B–4–c–(6). Laboratory doors shall be self-closing.

II–B–4–c–(7). A double-door autoclave shall be provided for sterilization of material passing out of the P4 facility. The autoclave doors shall be interlocked so that both doors will not be open at the same time.

II–B–4–c–(8). A pass-through dunk tank or fumigation chamber shall be provided for removal from the P4 facility of material and equipment that cannot be heat-sterilized.

II–B–4–c–(9). All liquid effluents from the P4 facility shall be collected and decontaminated before disposal. Liquid effluents from biological safety cabinets and laboratory sinks shall be sterilized by heat. Liquid effluents from the shower and hand washing facilities may be inactivated by chemical treatment. HEPA filters shall be installed in all vents from effluent drains.

II–B–4–c–(10). An individual supply and exhaust-air ventilation system shall be provided. The system shall maintain pressure differentials and directional air flow as required to ensure inflow from areas outside the facility toward areas of highest potential risk within the facility. The system shall be designed to prevent the reversal of air flow. The system shall sound an alarm in the event of system malfunction.

II–B–4–c–(11). Air within individual laboratories of the P4 facility may be recirculated if HEPA filtered.

II–B–4–c–(12). The exhaust air from the P4 facility shall be HEPA filtered and discharged to the outdoors so that it is dispersed clear of occupied buildings and air intakes. The filter chambers shall be designed to allow *in situ* decontamination before removal and to facilitate certification testing after replacement.

II–B–4–c–(13). The treated exhaust-air from Class I and Class II biological safety cabinets [20] may be discharged directly to the laboratory room environment or to the outdoors. The treated exhaust-air from Class III cabinets shall be discharged to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through the P4 facility exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinets or the facility exhaust air system.

II–B–4–c–(14). As noted in Section II–B–4–b–(1), the P4 facility may contain specially designed areas in which all personnel are required to wear one-piece positive-pressure isolation suits. Such areas shall be airtight. The exhaust-air from the suit area shall be filtered by two sets of HEPA filters installed in series, and a duplicate filtration unit and exhaust fan shall be provided. The air pressure within the suit area shall be less than that in any adjacent area. An emergency lightning system, communication systems, and power source shall be provided. A double-door autoclave shall be provided for sterilization of all waste materials to be removed from the suit area.

Personnel who enter this area shall wear a one-piece positive-pressure suit that is ventilated by a life-support system. The life-support system shall be provided with alarms and emergency backup air. Entry to this area is through an airlock fitted with airtight doors. A chemical shower area shall be provided to decontaminate the surfaces of the suit before removal.

II–C. *Shipment.* Recombinant DNA molecules contained in an organism or virus shall be shipped only as an etiologic agent under requirements of the U.S. Public Health Service and the U.S. Department of Transportation (Section 72.25, Part 72, Title 42, and Section 173.386–.388, Part 173, Title 49, U.S. Code of Federal Regulations) as specified below:

II–C–1. Recombinant DNA molecules contained in an organism or virus requiring P1, P2, or P3 physical containment, when offered for transportation or transported, are subject to all requirements of Section 72.25(c)(1)–(5), Part 72, Title 42 CFR, and Sections 173.386–.388, Part 173, Title 49 CFR.

II–C–2. Recombinant DNA molecules contained in an organism or virus requiring P4 physical containment, when offered for transportation or transported, are subject to the requirements listed above under II–C–1 and are also subject to Section 72.25(c)(6), Part 72, Title 42 CFR.

II–C–3. Additional information on packaging and shipment is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research."

II–D. *Biological Containment.*

II–D–1. *Levels of Biological Containment.* In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment must be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory and (ii) transmission of the vector from the propagation host to other nonlaboratory hosts.

The following levels of biological containment (HV, or Host-Vector, systems) for prokaryotes will be established; specific criteria will depend on the organisms to be used. Eukaryotic host-vector systems are considered in Part III.

II–D–1–a. *HV1.* A host-vector system which provides a moderate level of containment. *Specific systems:*

II–D–1–a–(1). *EK1.* The host is always *E. coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof [21–27]) and variants of bacteriophage, such as lambda [28–33]. The *E. coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages, except as specified in Section III–0.

II–D–1–a–(2). *Other Prokaryotes.* Hosts and vectors shall be, at a minimum, comparable in containment to *E. coli* K–12 with a non conjugative plasmid of bacteriophage vector. The data to be considered and a mechanism for approval of such HV1 systems are described below (Section II–D–2).

II–D–1–b. *HV2.* These are host-vector systems shown to provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Escape of the recombinant or via transmission of recombinant DNA to other organisms DNA either via survival of the organisms should be less than $1/10^8$ under specified conditions. *Specific systems:*

II–D–1–b(1). For EK2 host-vector systems in which the vector is a plasmid, no more than one in 10^8 host cells should be able to perpetuate a

cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequence of transmission of the cloned DNA fragment.

II–D–1–b–(2). For EK2 host-vector systems in which the vector is a phage, no more than one in 10^8 phage particles should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment either (i) as a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation or (ii) by surviving in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

II–D–1–c. *HV3.* These are host-vector systems in which:

II–D–1–c–(1). All HV2 criteria are met.

II–D–1–c–(2). The vector is dependent on its propagation host or is highly defective in mobilizability. Reversion to host-independence must be less than $1/10^8$ per vector genome per generation.

II–D–1–c–(3). No markers conferring resistance to antibiotics commonly used clinically or in agriculture are carried by the vector, unless expression of such markers is dependent on the propagating host or on unique laboratory-controlled conditions or is blocked by the inserted DNA.

II–D–1–c–(4). The specified containment shown by laboratory tests has been independently confirmed by specified tests in animals, including primates, and in other relevant environments.

II–D–1–c–(5). The relevant genotypic and phenotypic traits have been independently confirmed.

II–D–2. *Certification of Host-Vector Systems.*

II–D–2–a. *Responsibility.* HV1 systems other than *E. coli* K–12, and HV2 and HV3 host-vector systems, may not be designated as such until they have been certified by the Director, NIH. Application for certification of a host-vector system is made by written application to the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205.

Host-vector systems that are proposed for certification will be reviewed by the NIH Recombinant DNA Advisory Committee (RAC). (See Section IV–E–1–b–(1)–(c).) This will first involve review of the data on construction, properties, and testing of the proposed host-vector system by a Working Group composed of one or more members of the RAC and other persons chosen because of their expertise in evaluating such data. The Committee will then evaluate the report of the Working Group and any other available information at a regular meeting. The Director, NIH is responsible for certification after receiving the advice of the RAC. Minor modifications of existing certified host-vector systems, where the modifications are of minimal or no consequence to the properties relevant to containment may be certified by the Director, NIH without review by the RAC. (See Section IV–E–1–b–(3)–(f).)

When new host-vector systems are certified, notice of the certification will be sent by ORDA to the applicant and to all IBCs and will be published in the *Recombinant DNA Technical Bulletin.* Copies of a list of all currently certified host-vector systems may be obtained from ORDA at any time.

The Director, NIH may at any time rescind the certification of any host-vector system. (See Section IV–E–1–b–(3)–(i).) If certification of a host-vector system is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system, or use the clones at a higher physical containment level unless NIH determines that the already constructed clones incorporate adequate biological containment.

Certification of a given system does not extend to modifications of either the host or vector component of that system. Such modified systems must be independently certified by the Director, NIH. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications of a certified system require the submission of complete testing data.

II–D–2–b. *Data To Be Submitted for Certification.*

II–D–2–b–(1). *HV1 Systems Other than E. Coli K–12.* The following types of data shall be submitted, modified as appropriate for the particular system under consideration: (i) A description of the organism and vector; the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction and survival and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and what sort of information is exchanged; and any relevant information on its pathogenicity or toxicity. (ii) A description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information. (iii) A general description of the range of experiments contemplated, with emphasis on the need for developing such an HV1 system.

II–D–2–b–(2). *HV2 Systems.* Investigators planning to request HV2 certification for host-vector systems can obtain instructions from ORDA concerning data to be submitted [33A, 33B]. In general, the following types of data are required: (i) Description of construction steps, with indication of source, properties, and manner of introduction of genetic traits. (ii) Quantitative data on the stability of genetic traits that contribute to the containment of the system. (iii) Data on the survival of the host-vector system under nonpermissive laboratory conditions designed to represent the relevant natural environment. (iv) Data on transmissibility of the vector and/or a cloned DNA fragment under both permissive and nonpermissive conditions. (v) Data on all other properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation. (vi) In some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals (e.g., rodents). Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments.

Data must be submitted in writing to ORDA. Ten to twelve weeks are normally required for review and circulation of the data prior to the meeting at which such data can be considered by the NIH Recombinant DNA Advisory Committee (RAC). Investigators are encouraged to publish their data on the construction, properties, and testing of proposed HV2 systems prior to consideration of the system by the RAC and its subcommittee. More specific instructions concerning the type of data to be submitted to NIH for proposed EK2 systems involving either plasmids or bacteriophage λ in *E. coli* K–12 are available from ORDA.

II–D–2–b–(3). *HV3 Systems.* Putative HV3 systems must, as the first step in certification, be certified as HV2 systems. Systems which meet the criteria given above under II–D–1–(c)–1, II–D–1–(c)–2, and II–D–1–(c)–3 will then be recommended for HV3 testing. Tests to evaluate various HV2 host-vector

systems for HV3 certification will be performed by contractors selected by NIH. These contractors will repeat tests performed by individuals proposing the HV2 system and, in addition, will conduct more extensive tests on conditions likely to be encountered in nature. The genotypic and phenotypic traits of HV2 systems will be evaluated. Tests on survival and transmissibility in and on animals, including primates, will be performed, as well as tests on survival in certain specified natural environments.

II–D–3. *Distribution of Certified Host-Vectors.* Certified HV2 and HV3 host-vector systems (plus appropriate control strains) must be obtained from the NIH or its designees, one of whom will be the investigator who developed the system. NIH shall announce the availability of the system by publication of notices in appropriate journals.

Plasmid vectors will be provided in a suitable host strain, and phage vectors will be distributed as small-volume lysates. If NIH propagates any of the host strains or phage, a sample will be sent to the investigator who developed the system or to an appropriate contractor, prior to distribution, for verification that the material is free from contamination and unchanged in phenotypic properties.

In distributing the certified HV2 and HV3 host-vector systems, NIH or its designee will (i) send out a complete description of the system; (ii) enumerate and describe the tests to be performed by the user in order to verify important phenotypic traits; (iii) remind the user that any modification of the system necessitates independent approval of the system by the NIH; and (iv) remind the user of responsibility for notifying ORDA of any discrepancies with the reported properties or any problems in the safe use of the system.

NIH may also distribute certified HV1 host-vector systems.

III. Containment Guidelines for Covered Experiments

Part III discusses experiments covered by the Guidelines. The reader must first consult Part I, where listings are given of prohibited and exempt experiments.

Containment guidelines for permissible experiments are given in Part III. Changes in these levels for specific experiments (or the assignment of levels to experiments not explicitly considered here) may not be instituted without the express approval of the Director, NIH. (See Sections IV–E–1–b–(1)–(a), IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

In the following classification of containment criteria for different kinds of recombinant DNAs, the stated levels of physical and biological containment are minimal for the experiments designated. The use of higher levels of biological containment (HV3>HV2>HV1) is encouraged if they are available and equally appropriate for the purposes of the experiment.

III–0. *Classification of Experiments Using the E. coli K–12 Host-Vector Systems.* Most recombinant DNA experiments currently being done employ *E. coli* K–12 host-vector systems. These are the systems for which we have the most experience and knowledge.

Some experiments using *E. coli* K–12 host-vector systems are prohibited (see Section I–D).

Some experiments using *E. coli* K–12 host-vector systems are exempt from the Guidelines (see Section I–E).

Other experiments using *E. coli* K–12 shall use P1 physical containment and, except as specified in the last paragraph of this section, an EK1 host-vector system (i.e. (a) the host shall not contain conjugation-proficient plasmids or generalized transducing phages, and (b) lambda or lambdoid bacteriophages or non-conjugative plasmids shall be used as vectors). For these experiments no Memorandum of Understanding and Agreement (MUA) as described in Section IV–D–1–c need be submitted, nor is any registration with NIH necessary. However, for these experiments, prior to their initiation, investigators must submit to their Institutional Biosafety Committee (IBC) a registration document that contains a description of (a) the source(s) of DNA, (b) the nature of the inserted DNA sequences, and (c) the hosts and vectors to be used. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals but such review is not required prior to initiation of experiments. An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express any gene coding for a eukaryotic protein.

Experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempted from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4).

For those not on the Appendix A list but which exchange genetic information [35] with *E. coli,* experiments may be performed with any *E. coli* K–12 vector (e.g. conjugative plasmid). When a non-conjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids, either autonomous or integrated, or generalized transducing phages.

III–A. *Classification of Experiments Using Certain HV1 and HV2 Host-Vector Systems.* Certain HV1 and HV2 host-vector systems are assigned containment levels as specified in the subsections of this Section III–A. Those so classified as of publication of these revised Guidelines are listed in Appendix D. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

It has been necessary, throughout this section, to use words and terms marked with footnote reference numbers. The footnotes (Part V) define more fully what the terms denote.

III–A–1. *Shotgun Experiments.* These experiments involve the production of recombinant DNAs between the vector and portions of the specified cellular source, preferably a partially purified fraction. Care should be taken either to preclude or eliminate contaminating micro-organisms before isolating the DNA.

III–A–1–a. *Eukaryotic DNA Recombinants.*

III–A–1–a–(1). *Primates.* P2 physical containment + an HV2 host-vector or P3 + HV1.

III–A–1–a–(2). *Other Mammals.* P2 physical containment + an HV2 host-vector or P3 + HV1.

III–A–1–a–(3). *Birds.* P2 physical containment + an HV2 host-vector, or P3 + HV1.

III–A–1–a–(4). *Cold-Blooded Vertebrates.* P2 physical containment + an HV1 host-vector or P1 + HV2. If the eukaryote is known to produce a potent polypeptide toxin, [34] the containment shall be increased to P3 + HV2.

III–A–1–a–(5). *Other Cold-Blooded Animals and Lower Eukaryotes.* This large class of eukaryotes is divided into two groups:

III–A–1–a–(5)–(a). Species that are known to produce a potent polypeptide toxin [34] that acts in vertebrates, or are known pathogens listed in Class 2, [1] or are known to carry such pathogens must use P3 physical containment + an HV2 host-vector. When the potent toxin is not a polypeptide and is likely not to be the product of closely linked eukaryote genes, containment may be reduced to P3 + HV1 or P2 + HV2. Species that produce potent toxins that affect invertebrates or plants but not

vertebrates require P2 + HV2 or P3 + HV1. Any species that has a demonstrated capacity for carrying particular pathogenic micro-organisms is included in this group, unless the organisms used as the source of DNA have been shown not to contain those agents, in which case they may be placed in the following group. [2A]

III–A–1–a–(5)–(b). The remainder of the species in this class including plant pathogenic or symbiotic fungi that do not produce potent toxins: P2 + HV1 or P1 + HV2. However, any insect in this group must be either (i) grown under laboratory conditions for at least 10 generations prior to its use as a source of DNA, or (ii) if caught in the wild, must be shown to be free of disease-causing micro-organisms or must belong to a species that does not carry micro-organisms causing disease in vertebrates or plants. [2A] If these conditions cannot be met, experiments must be done under P3 + HV1 or P2 + HV2 containment.

III–A–1–a–(6). *Plants.* P2 physical containment + an HV1 host-vector, or P1 + HV2. If the plant source makes a potent polypeptide toxin, [34] the containment must be raised to P3 physical containment + an HV2 host-vector. When the potent toxin is not a polypeptide and is likely not to be the product of closely linked plant genes, containment may be reduced to P3 + HV1 or P2 + HV2. [2A]

III–A–1–b. *Prokaryotic DNA Recombinants.* P2 + HV1 or P1 + HV2 for experiments with phages, plasmids and DNA from nonpathogenic prokaryotes which do not produce polypeptide toxins [34]. P3 + HV2 for experiments with phages, plasmids and DNA from Class 2 agents [1].

III–A–2–a. *Viruses of Eukaryotes* (summary given in Table III; see also exception given at asterisk at end of Appendix D).

III–A–2–a–(1)–(a). *Nontransforming viruses.*

III–A–2–a–(1)–(a)–(*1*). *Adeno-Associated Viruses, Minute Virus of Mice, Mouse Adenovirus (Strain FL), and Plant Viruses.* P1 physical containment + and HV1 host-vector shall be used for DNA recombinants produced with (i) the whole viral genome, (ii) subgenomic DNA segments, or (iii) purified cDNA copies of viral mRNA. [37]

III–A–2–a–(1)–(a)–(*2*). *Hepatitis B.*

III–A–2–a–(1)–(a)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for purified subgenomic DNA segments. [38]

III–A–2–a–(1)–(a)–(*2*)–(*b*). P2 physical containment + an HV2 host-vector, or P3 + HV1, shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(a)–(*2*)–(*c*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants derived from purified cDNA copies of viral mRNA. [37]

III–A–2–a–(1)–(a)–(*3*). *Other Nontransforming Members of Presently Classified Viral Families.* [36]

III–A–2–a–(1)–(a)–(*3*)–(*a*). P1 physical containment + an HV1 host-subgenomic DNA[38] segments or (ii) purified cDNA copies of viral mRNA. [37]

III–A–2–a–(1)–(a)–(*3*)–(*b*). P1 physical containment + an HV1 host and a vector certified for use in an HV2 system shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(b). *Tranforming Viruses.* [37A]

III–A–2–a–(1)–(b)–(*1*). *Herpes Saimiri, Herpes Ateles, and Epstein Barr Virus.* [39]

III–A–2–a–(1)–(b)–(*1*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments. [38]

III–A–2–a–(1)–(b)–(*1*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for (i) DNA recombinants produced with purified subgenomic DNA segments containing an entire transforming gene [38] or (ii) purified cDNA copies of viral mRNA. [37]

III–A–2–a–(1)–(b)–(*1*)–(*c*). P3 physical containment + an HV1 host-vector, or P2 + HV2, shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(b)–(*2*). *Other Tranforming Members of Presently Classified Viral Families.* [36]

III–A–2–a–(1)–(b)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments. [38]

III–A–2–a–(1)–(b)–(*2*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for (i) DNA recombinants produced with the whole viral genome, (ii) subgenomic DNA segments containing an entire transforming gene, (iii) purified cDNA copies of viral mRNA, [37] or (iv) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2). *DNA Transcripts of RNA Viruses.*

III–A–2–a–(2)–(a). *Retroviruses.*

III–A–2–a–(2)–(a)–(*1*). *Gibbon Ape, Woolly Monkey, Feline Leukemia and Feline Sarcoma Viruses. [39]*

III–A–2–a–(a)–(2)–(*1*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments. [38]

III–A–2–a–(2)–(a)–(*1*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with purified subgenomic DNA segments [38] containing an entire transforming gene.

III–A–2–a–(2)–(a)–(*1*)–(*c*). P2 physical containment + an HV2 host-vector, or P3 + HV1, shall be used for DNA recombinants produced with (i) the whole viral genome, (ii) purified cDNA copies of viral mRNA, [37] or (iii) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2)–(a)–(*2*). *Other Members of the Family Retroviridiae. [36]*

III–A–2–a–(2)–(a)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments. [38]

III–A–2–a–(2)–(a)–(*2*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with (i) subgenomic DNA segments containing an entire transforming gene, (ii) the whole viral genome, or (iii) purified cDNA copies of viral mRNA, [37] or (iv) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2)–(b). *Negative Strand RNA Viruses.* P1 physical containment + and HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole genome, (ii) subgenomic cDNA segments, or (iii) purified cDNA copies of viral mRNA. [37]

III–A–2–a–(2)–(c). *Plus-Strand RNA Viruses.*

III–A–2–a–(2)–(c)–(*1*). *Types 1 and 2 Sabin Poliovirus Vaccine Strains and Strain 17D (Theiler) of Yellow Fever Virus.* P1 physical containment + and HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole viral genome, (ii) subgenomic cDNA segments, or (iii)

purified cDNA copies of viral mRNA. [37]

III–A–2–a–(2)–(c)–(2). *Other Plus-Strand RNA Viruses Belonging to Presently Classified Viral Families. [36]*

Table III.—*Recommended Containment for Cloning of Viral DNA or cDNA in Certain HV1 and HV2 Systems Specified in Appendix D*

[See text for full details]

Virus class	Type of viral DNA segment to be cloned				
	Subgenomic[38]		Genomic*		cDNA from viral mRNA[37]
	Nontransforming segment	Segment containing an entire transforming gene	Nonsegmented genome	Segmented genome	
DNA					
NONTRANSFORMING VIRUSES					
AAV, MVM, Mouse Adeno (Strain FL)	P1+HV1		P1+HV1		P1+HV1
Plant Viruses	P1+HV1		P1+HV1		P1+HV1
Hepatitis B	P1+HV1[38]		P2+HV2 or P3+HV1.		P2+HV1CV[40] or P3+HV1
Other	P1+HV1[38]		P1+HV1CV[40]		P1+HV1
TRANSFORMING VIRUSES					
Herpes Saimiri, H. Ateles and EBV[39].	P1+HV1[38]	P2+HV1CV[40] or P3+HV1[38].	P2+HV2 or P3+HV1.		P2+HV1CV[40] or P3+HV1
Other	P1+HV1[38]	P2+HV1CV[40] or P3+HV1.	P2+HV1CV[40] or P3+HV1.		P2+HV1CV[40] or P3+HV1
RNA					
RETROVIRUSES					
Gibbon Ape, Woolly Monkey FeLV and FeSV[39].	P1+HV1[38]	P2+HV1CV[40] or P3+HV1[38].	P2+HV2 or P3+HV1.		P2+HV2 or P3+HV1
Other	P1+HV1[38]	P2+HV1CV[40] or P3+HV1.	P2+HV1CV[40] or P3+HV1.		P2+HV1CV[40] or P3+HV1
Negative-Strand RNA	P1+HV1		P1+HV1	P1+HV1	P1+HV1
PLUS-STRAND RNA					
Types 1 and 2 Sabin Polio, 17D Yellow Fever Vaccine Strains.	P1+HV1		P1+HV1		P1+HV1
Other	P1+HV1[38]		P2+HV1CV[40] or P3+HV1.		P2+HV1CV[40] or P3+HV1
Double-Stranded RNA	P1+HV1			P1+HV1	P1+HV1
Plant Viruses+Viroids	P1+HV1		P1+HV1	P1+HV1	P1+HV1
Intracellular Viral DNA	See text	See text	See text		

*See exception given at asterisk at end of Appendix D.

III–A–2–a–(2)–(c)–(2)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified subgenomic cDNA segments.[38]

III–A–2–a–(2)–(c)–(2)–(*b*). P2 physical containment + and HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with (i) cDNA copies of the whole genome, or (ii) purified cDNA copies of viral mRNA.[37]

III–A–2–a–(2)–(d). *Double-Stranded Segmented RNA Viruses.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) mixtures of subgenomic cDNA segments, (ii) a specific subgenomic cDNA segment, or (iii) purified cDNA copies of viral mRNA.[37]

III–A–2–a–(2)–(e). *RNA Plant Viruses and Plant Viroids.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole viral genome, (ii) subgenomic cDNA segments, or (iii) purified cDNA copies of viral mRNA.[37]

III–A–2–a–(3). *Intracellular Viral DNA.* Physical and biological containment specified for shotgun experiments with eukaryotic cellular DNA [see Section III–A–(1)–(a)] shall be used for DNA recombinants produced with integrated viral DNA or viral genomes present in infected cells.

III–A–2–b. *Eukaryotic Organelle DNAs.* P2 physical containment + an HV1 host-vector, or P1 + HV2, for mitochondrial or chloroplast DNA from eukaryotes when the organelle DNA has been obtained from isolated organelles. Otherwise, the conditions given for shotgun experiments apply.

III–A–2–c. *Prokaryotic Plasmid and Phage DNAs.* The containment levels required for shotgun experiments with DNA from prokaryotes apply to their plasmids or phages (See Section III–A–1–b.)

III–A–3. *Lowering of Containment Levels for Characterized or Purified DNA Preparations and Clones.* Many of the risks which might conceivably arise from some types of recombinant DNA experiments, particularly shotgun experiments, would result from the inadvertent cloning of a harmful sequence. Therefore, in cases where the risk of inadvertently cloning the "wrong" DNA is reduced by prior enrichment for the desired piece, or in which a clone made from a random assortment of DNAs has been purified and the absence of harmful sequences established, the containment conditions for further work may be reduced. The following section outlines the mechanisms for such reductions.

III–A–3–a. *Purified DNA Other than Plasmids, Bacteriophages, and Other Viruses.* The formation of DNA recombinants from cellular DNAs that have been purified[41] and in which the absence of harmful sequences has been established[3] can be carried out under lower containment conditions than used for the corresponding shotgun experiment.[42] The containment may be decreased one step in physical containment (P4→P3; P3→P2; P2→P1) while maintaining the biological containment specified for the shotgun experiment, or one step in biological containment (HV3→HV2; HV2→HV1) while maintaining the specified physical containment. The institutional biosafety committee (IBC) must review such a reduction and the approval of the IBC and of the NIH must be secured before such a reduction may be put into effect.

III–A–3–b. *Characterized Clones of DNA Recombinants.* When a cloned DNA recombinant has been rigorously characterized and the absence of harmful sequences has been established (3), experiments involving this recombinant DNA may be carried out under lower containment conditions, with the prior approval of the IBC and of NIH.

III–B. *Experiments with Prokaryotic Host-Vectors Other Than E. coli K–12*

III–B–1. *HV1 and HV2 Systems.* Certain certified HV1 and HV2 host-vector systems appear in Appendix D. The containment levels for these systems are given in the subsections of Section III–A. Other systems in the

future may be certified as HV1 and HV2. At the time of certification, the classification of containment levels for experiments using them will be assigned by NIH.

III–B–2. *Return of DNA Segments to Prokaryotic Non-HV1 Host of Origin.* Certain experiments involving those prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempt from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4). For a prokaryote which can exchange genetic information[35] with *E. coli* under laboratory conditions but which is not on the list (Host A), the following type of experiment may be carried out under P1 conditions without Host A having been approved as an HV1 host: DNA from Host A may be inserted into a vector and propagated in *E. coli* K–12 under P1 conditions. Subsequently, this recombinant DNA may be returned to Host A by mobilization, transformation, or transduction and may then be propagated in Host A in any desired vector under P1 conditions.

For a prokaryote which does not exchange genetic information with *E. coli* (Host B), the following type of experiment may be carried out without Host B having been approved as an HV1 host: DNA from Host B may be inserted into a lambdoid phage vector or into a vector from a certified EK2 host-vector system and propogated in *E. coli* K–12 under P1 conditions. Subsequently, this recombinant DNA may be returned to Host B and propagated in Host B under P1 conditions.[43]

III–B–3. *Non-HV1 Systems.* Containment levels for other classes of experiments involving non-HV1 systems may be approved by the Director, NIH. (See Sections IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

In those cases where genetic exchange has not been demonstrated between two bacterial species A and B, neither of which is known to be pathogenic for man, animals, or plants, recombinant DNA experiments involving only A and B can be conducted under P3 containment. [2A]

III–C. *Experiments with Eukaryotic Host-Vectors.*

III–C–1. *Vertebrate Host-Vector Systems.[44]* (Summary given in Table IV).

III–C–1–a. *Polyoma Virus.*

III–C–1–a–(1). *Productive Virus-Cell Interactions.*

III–C–1–a–(1)–(a). Defective or whole polyoma virus genomes, with appropriate helper, if necessary, can be used in P2 conditions to propagate DNA sequences:

III–C–1–a–(1)–(a)–(*1*). from bacteria of class 1 or class 2[1] or their phages or plasmids, except for those that produce potent polypeptide toxins;[34]

III–C–1–a–(1)–(a)–(*2*). from mice;

III–C–1–a–(1)–(a)–(*3*). from eukaryotic organisms that do not produce potent polypeptide toxins,[34] provided that the DNA segment is > 99% pure.

III–C–1–a–(1)–(b). Defective polyoma genomes, with appropriate helper, if necessary, can be used in P2 conditions for shotgun experiments to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins.[34]

III–C–1–a–(1)–(c). Whole virus genomes with appropriate helper, if necessary, can be used in P3 conditions for shotgun experiments to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins.[34]

III–C–1–a–(1)–(d). Experiments involving the use of defective polyoma virus genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–a–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole polyoma virus genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physcial and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–b. *Simian Virus 40.*

III–C–1–b–(1). *Productive Virus-Cell Interactions.*

III–C–1–b–(1)–(a). SV40 DNA, rendered unconditionally defective by a deletion in an essential gene, with appropriate helper, can be used in P2 conditions to propagate DNA sequences from:

III–C–1–b–(1)–(a)–(*1*). bacteria of Class 1 or Class 2,[1] or their phages or plasmids, except for those that produce potent polypeptide toxins; [34]

III–C–1–b–(1)–(a)–(*2*). uninfected African green monkey kidney cell cultures.

III–C–1–b–(1)–(b). SV40 DNA, rendered unconditionally defective by a deletion in an essential gene, with an appropriate helper, can be used in P3 conditions to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins[34] (shotgun experiments or purified DNA).

III–C–1–b–(1)–(c). Experiments involving the use of defective SV40 genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–b–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole SV40 genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–c. *Human Adenoviruses 2 and 5.*

III–C–1–c–(1). *Productive Virus-Cell Interactions.*

III–C–1–c–(1)–(a). Human adenoviruses 2 and 5, rendered unconditionally defective by deletion of at least two essential genes, with appropriate helper, can be used in P3 conditions to propagate DNA sequences from:

III–C–1–c–(1)–(a)–(*1*). bacteria of Class 1 or Class 2[1] or their phages or plasmids except for those that produce potent polypeptide toxins;[34]

III–C–1–c–(1)–(a)–(*2*). eukaryotic organisms that do not produce potent polypeptide toxins[34] (shotgun experiments or purified DNA).

III–C–1–c–(1)–(b). Experiments involving the use of unconditionally defective human adenovirus 2 and 5 genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological contaninment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–c–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole human adenovirus 2 and 5 genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences

are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d. *Murine Adenovirus Strain FL.*

III–C–1–d—(1). *Productive Virus-Cell Interactions.*

III–C–1–d–(1)–(a). Unconditionally defective murine adenovirus strain FL genomes, with appropriate helper, can be used in P2 conditions to propagate DNA sequences from:

III–C–1–d–(1)–(a)–(*1*). bacteria of Class 1 or Class 2[1] or their phages or plasmids except for those that produce potent polypeptide toxins;[34]

III–C–1–d–(1)–(a)–(*2*). eukaryotic organisms that do not produce potent polypeptide toxins[34] (shotgun experiments or purified DNA).

III–C–1–d–(1)–(b). Experiments involving the use of whole murine adenovirus strain FL genomes to propagate DNA sequences from prokaryotic or eukaryotic organisms will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d–1–(c). Experiments involving the use of unconditionally defective murine adenovirus strain FL genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole murine adenovirus strain FL genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e. *All Other Potential Viral Vectors.*

III–C–1–e–(1). Experiments involving recombinant DNA molecules containing viral DNA segments consisting of 25% or less of the virus genome can be done:

III–C–1–e–(1)–(a). In P2 conditions when the recombinant DNA is to be integrated into the cell genome or is known to replicate as a plasmid in cells in culture, provided the additional DNA sequences are not derived from a eukaryotic virus. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e–(1)–(b). Under physical and biological containment conditions to be determined by NIH [45] when a viral helper will be used to propagate DNA sequences from prokaryotic or eukaryotic organisms. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e–(2). Experiments involving the use of other whole or defective virus genomes to propagate DNA sequences from prokaryotic or eukaryotic organisms (and viruses), or as vectors to transform nonpermissive cells, will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

NIH will also review on a case-by-case basis [45] all experiments involving the use of virus vectors in animals and will prescribe the physical and biological containment conditions appropriate for such studies. (See Section IV–E–1–b–(3)–(c).)

III–C–1–f. *Nonviral Vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I–E). DNA recombinants formed between such vectors and nonviral DNA from cells other than the host species require only P1 physical containment for cells in culture since vertebrate cells in tissue culture inherently exhibit a very high level of containment. Recombinants involving viral DNA or experiments which require the use of the whole animals will be evaluated by NIH on a case-by-case basis [45].

III–C–2. *Invertebrate Host-Vector Systems.*

III–C–2–a. *Insect Viral Vectors.* As soon as information becomes available on the host range restrictions and on the infectivity, persistence, and integration of the viral DNA in vertebrate and invertebrate cells, experiments involving the use of insect viruses to propagate DNA sequences will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the recommended physical containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–2–b. *Nonviral Vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I–E). DNA recombinants formed between such vectors and DNA from cells other than the host species require P1 physical containment for invertebrate cells in culture since invertebrate cells in culture inherently exhibit a very high level of containment. Experiments which require the use of whole animals will be evaluated by NIH on a case-by-case basis [45].

III–C–3. *Plant Viral Host-Vector Systems.* The DNA Plant viruses which could currently serve as vectors for cloning genes in plants and plant cell protoplasts are Cauliflower Mosaic Virus (CaMV) and its close relatives [2A] which have relaxed circular double-stranded DNA genomes with a molecular weight of 4.5×10^6, and Bean Golden Mosaic Virus (BGMV) and related viruses with small ($<10^6$ daltons) single-stranded DNA genomes. CaMV is spread in nature by aphids, in which it survives for a few hours. Spontaneous mutants of CaMV which lack a factor essential for aphid transmission arise frequently. BGMV is spread in nature by whiteflies, and certain other single-stranded DNA plant viruses are transmitted by leafhoppers.

The DNA plant viruses have narrow host ranges and are relatively difficult to transmit mechanically to plants. For this reason, they are most unlikely to be accidentally transmitted from spillage of purified virus preparations.

When these viruses are used as vectors in intact plants, or propagative plant parts, the plants shall be grown under P1 conditions—that is, in either a limited access greenhouse or plant growth cabinet which is insect-restrictive, preferably with positive air pressure, [2A] and in which an insect fumigation regime is maintained. Soil, plant pots, and unwanted infected materials shall be removed from the greenhouse or cabinet in sealed insect-proof containers and sterilized. It is not necessary to sterilize run-off water from the infected plants, as this is not a plausible route for secondary infection. When the viruses are used as vectors in tissue cultures or in small plants in axenic cultures, no special containment is necessary. Infected plant materials which have to be removed from the greenhouse or cabinet for further research shall be maintained under insect-restrictive conditions. These

measures provide an entirely adequate degree of containment. They are similar to those required in many countries for licensed handling of "exotic" plant viruses.

The CaMV strain used as a cloning vector shall be a mutant that lacks the aphid transmission factor.

The viruses or their DNA may also be useful as vectors to introduce genes into plant protoplasts. The fragility of plant protoplasts combined with the properties of the viruses provides adequate safety. Since no risk to the environment from the use of the DNA plant virus/protoplast system is envisaged, no special containment is necessary, except as described in the following paragraph.

Experiments involving the use of plant virus genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

Table IV.—*Recommended Containment for Recombinant DNA Research Using Eukaryotic Viral Vectors*

[See text for full details]

Vector DNA	Productive virus-cell interactions						Non-productive virus-cell interactions [46]
	Type of DNA insert						
	Prokaryotic		Eukaryotic				
			Shotgun			Eukaryotic viral	
	Shotgun	Purified	Natural host	Other	Purified [47]		
1. Polyoma:							
Intact Genome	P2	P2	P2	P3	P2	CBC*	P2
Deleted Genome	P2	P2	P2	P2	P2	CBC*	P2
2. SV40:							
Intact Genome							P2
Deleted Genome	P2	P2	P2	P3	P3	CBC*	P2
3. Human Ad2+Ad5: Deleted Genome	P3	P3	P3	P3	P3	CBC*	P2
4. Mouse Adenovirus: (Strain FL)							
Intact Genome	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	P2
Deleted Genome	P2	P2	P2	P2	P2	CBC*	P2
5. Insect Viruses	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	
6. Plant Viruses: (CaMV and BGMV)	(**)	(**)	(**)	(**)	(**)	CBC*	
7. All other potential Viral Vectors	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*

*CBC=case-by-case [45].
**See text.

III–C–4. *Plant Host-Vector Systems Other than Viruses.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I–E). DNA recombinants formed between such vectors and DNA from cells other than the host species require P2 physical containment. The development of host-vector systems that exhibit a high level of biological containment, such as those using protoplasts or undifferentiated cells in culture, permit [2A] a decrease in the physical containment to P1.

Intact plants or propagative plant parts which cannot be grown in a standard P2 laboratory because of their large size may be grown under the P1 conditions described above in Section III–C–3, except that (i) sterilization of run-off water is required where this is a plausible route for secondary infection and (ii) the standard P2 practices are adopted for microbiological work.

III–C–5. *Fungal or Similar Lower Eukaryotic Host-Vector Systems.* Certain certified HV1 and HV2 host-vector systems appear in Appendix D. The containment levels for these systems are given in the subsections of Section III–A. Other systems in the future may be certified as HV1 and HV2. At the time of certification, they may be added to Appendix D (and thus the containment levels for their use will be those of the subsections of Section III–A). Alternatively, at the time of their certification, another classification of containment levels for experiments using them may be assigned by NIH.

In addition to the experiments described above, the following experiments may be carried out without the eukaryotic host (Host C) having been approved as an HV1 host: DNA from Host C may be inserted into lambdoid phage vector or into a vector from a certified EK2 host-vector system and propagated in *E. coli* K–12 under P1 conditions. Subsequently, this recombinant DNA may be returned to Host C and propagated there under P1 conditions. [43]

Containment levels for other classes of experiments involving non-HV1 systems may be expressly approved by the Director, NIH. (See Sections IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

III–C–6. *Return of DNA Segments to a Higher Eukaryotic Host of Origin.* DNA from a higher eukaryote (Host D) may be inserted into a lambdoid phage vector or into a vector from a certified EK2 host-vector system and propagated in *E. coli* K–12 under P1 containment conditions. Subsequently, this recombinant DNA may be returned to Host D and propagaged under conditions of physical containment comparable to P1 and appropriate to the organism under study. [2A]

III–C–7. *Transfer of cloned DNA Segments to Eukaryotic Organisms*

III–C–7–a. *Transfer to Non-human Vertebrates.* DNA from any nonprohibited source [Section I–D], except for greater than one quarter of a eukaryotic viral genome, which has been cloned and propagated in *E. coli* under P1 conditions, may be transferred with the *E. coli* vector used for cloning to any eukaryotic cells in culture or to any non-human vertebrate organism and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study [2A]. Transfers to any other host will be considered by the RAC on a case-by-case basis [45].

III–C–7–b. *Transfer to Higher Plants.* DNA from any nonprohibited source [Section I–D] which has been cloned and propagated in *E. coli* under P1 conditions, may be transferred with the *E. coli* vector used for cloning to any higher plant organisms (Angiosperms and Gymnosperms) and propagated

under conditions of physical containment comparable to P1 and appropriate to the organism under study [2A]. Intact plants or propagative plant parts may be grown under P1 conditions described under Section III–C–3. Containment must be modified to ensure that the spread of pollen, seed or other propagules is prevented. This can be accomplished by conversion to negative pressure in the growth cabinet or greenhouse or by physical entrapment by "bagging" of reproductive structures. Transfers to any other plant organisms will be considered on a case-by-case basis [45].

III–D. *Complementary DNAs.* Specific containment levels are given in Section III–A–2–a (see also last column of Table III) for complementary DNA (cDNA) of viral mRNA. For the other Sections of the Guidelines, where applicable, cDNAs synthesized *in vitro* are included within each of the above classifications. For example, cDNAs formed from cellular RNAs that are not purified and characterized are included under III–A–1, shotgun experiments; cDNAs formed from purified and characterized RNAs are included under III–A–3; etc.

Due to the possibility of nucleic acid contamination of enzyme preparations used in the preparation of cDNAs, the investigator must employ purified enzyme preparations that are free of viral nucleic acid.

III–E. *Synthetic DNAs.* If the synthetic DNA segment is likely to [2A] yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent), the containment conditions must be as stringent as would be used for propagating the natural DNA counterpart.

If the synthetic DNA sequence codes for a harmless product, [2A] it may be propagated at the same containment level as its purified natural DNA counterpart. For example, a synthetic DNA segment which corresponds to a nonharmful gene of birds, to be propagated in *Saccharomyces cerevisiae,* would require P2 physical containment plus an HV1 host-vector, or P1+HV2.

If the synthetic DNA segment is not expressed *in vivo* as a polynucleotide or polypeptide product, the organisms containing the recombinant DNA molecule are exempt [4] from the Guidelines.

IV. Roles and Responsibilities

IV–A. *Policy.* Safety in activities involving recombinant DNA depends on the individual conducting them. The Guidelines cannot anticipate every possible situation. Motivation and good judgement are the key essentials to protection of health and the environment.

The Guidelines are intended to help the Institution, the Institutional Biosafety Committee (IBC), the Biological Safety Officer, and the Principal Investigator determine the safeguards that should be implemented. These Guidelines will never be complete or final, since all conceivable experiments involving recombinant DNA cannot be forseen. Therefore, it is the responsibility of the Institution and those associated with it to adhere to the *purpose* of the Guidelines as well as to their specifics.

Each Institution (and the IBC acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level.

The following roles and responsibilities constitute an administrative framework in which safety is an essential and intergral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.

IV–B. *General Applicability.* The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an Institution that receives any support for recombinant DNA research from NIH. This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an Institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

IV–C. *General Definitions.* The following terms, which are used throughout the Guidelines, are defined as follows:

IV–C–1. "DNA" means deoxyribonucleic acid.

IV–C–2. "Recombinant DNA" or "recombinant DNA molecules" means either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules which result from the replication of a molecule described in (i) above.

IV–C–3. "Memorandum of Understanding and Agreement" or "MUA" is a document that (i) provides to NIH or other Federal funding agency an Institution's certification that the recombinant DNA research project complies with the NIH Guidelines and (ii) contains other essential data as required in the Administrative Practices Supplement.

IV–C–4. "Institution" means any public or private entity (including Federal, State, and local government agencies).

IV–C–5. "Institutional Biosafety Committee" or "IBC" means a committee that (i) meets the requirements for membership specified in Section IV–D–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Sections IV–D–2 and –3.

IV–C–6. "NIH Office of Recombinant DNA Activities" or "ORDA" means the office within NIH with responsibility for (i) reviewing and coordinating all activities of NIH related to the Guidelines, and (ii) performing other duties as defined in Section IV–E–3.

IV–C–7. "Recombinant DNA Advisory Committee" or "RAC" means the public advisory committee that advises the Secretary, the Assistant Secretary for Health, and the Director of the National Institutes of Health concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV–E–2.

IV–C–8. "Director, NIH" or "Director" means the Director of the National Institutes of Health and any other officer or employee of NIH to whom authority has been delegated.

IV–C–9. "Federal Interagency Advisory Committee on Recombinant DNA Research" means the committee established in October 1976 to advise the Secretary, HEW, the Assistant Secretary for Health, and the Director, NIH, on the coordination of those aspects of all Federal programs and activities which relate to recombinant DNA research.

IV–C–10. "Administrative Practices Supplement" or "APS" means a publication to accompany the NIH Guidelines specifying administrative procedures for use at NIH and at Institutions.

IV-C-11. "Laboratory Safety Monograph" or "LSM" means a publication to accompany the NIH Guidelines describing practices, equipment, and facilities in detail.

IV-D. *Responsibilities of the Institution*

IV-D-1. Each Institution conducting or sponsoring recombinant DNA research covered by these Guidelines is responsible for ensuring that the research is carried out in full conformity with the provisions of the Guidelines. In order to fulfill this responsibility, the Institution shall:

IV-D-1-a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the Guidelines. The Institution, as part of its general responsibilities for implementing the Guidelines, may establish additional procedures, as deemed necessary, to govern the Institution and its components in the discharge of its responsibilities under the Guidelines. This may include (i) statements formulated by the Institution for general implementation of the Guidelines and (ii) whatever additional precautionary steps the Institution may deem appropriate.

IV-D-1-b. Establish an Institutional Biosafety Committee (IBC) that meets the requirements set forth in Section IV-D-2 and carries out the functions detailed in Section IV-D-3.

IV-D-1-c. Submit, for each recombinant DNA project that meets with its approval, a Memorandum of Understanding and Agreement (MUA) to the funding agency for approval and registration. (NOTE: No MUA is required for experiments described in Section III-O.) All projects, however, can proceed upon IBC approval (before submission of the MUA to the funding agency) except for the following, which require prior approval by NIH (or other funcing agency designated by NIH for this purpose):

IV-D-1-c-(1). Projects for which containment levels are not specified by the Guidelines or NIH,

IV-D-1-c-(2). Projects requiring P4 containment,

IV-D-1-c-(3). Reductions of containment levels for characterized or purified DNA preparations or clones (see Section II-A-3),

IV-D-1-c-(4). The first project conducted in a facility at P3 containment, or

IV-D-1-c-(5). The first project conducted by an Institution.

Note.—The MUA shall be submitted to the funding agency within 30 days of the IBC approval. If the funding agency does not routinely register recombinant DNA projects with NIH, the MUA must be submitted to NIH as well as to the funding agency. Authority to submit MUAs (or addenda) for which prior approval is not required may be delegated to the IBC chairperson. All MUAs that require NIH approval before the work can proceed shall be submitted to the NIH by the institutional official to whom the IBC is responsible.

IV-D-1-d. Take appropriate action to bring protocols into compliance when advised by NIH or other funding agency that IBC-approved projects do not conform to standards set forth in the Guidelines. This responsibility may be delegated to the IBC. (See Administrative Practices Supplement for further details).

IV-D-1-e. If the Institution is engaged in recombinant DNA research at the P3 or P4 containment level, appoint a Biological Safety Officer (BSO), who shall be a member of the IBC and carry out the duties specified in Section IV-D-4.

IV-D-1-f. Require that investigators responsible for research covered by these Guidelines comply with the provisions of Section IV-D-5, and assist investigators to do so.

IV-D-1-g. Ensure appropriate training for the IBC chairperson and members, the BSO, Principal Investigators (PIs), and laboratory staff regarding the Guidelines, their implementation, and laboratory safety. Responsibility for training IBC members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training, but may delegate this responsibility to the IBC.

IV-D-1-h. Determine the necessity, in connection with each project, for health surveillance of recombinant DNA research personnel, and conduct, if found appropriate, a health surveillance program for the project. [The Laboratory Safety Monograph (LSM) discusses various possible components of such a program—for example, records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience. Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples given in the LSM include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness.]

IV-D-1-i. Report within 30 days to ORDA any significant problems with and violations of the Guidelines and significant research-related accidents and illnesses, unless the institution determines that the PI or IBC has done so.

IV-D-2. *Membership and Procedures of the IBC.* The Institution shall establish an Institutional Biosafety Committee (IBC) meeting the following requirements:

IV-D-2-a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At leat two members (but not less than 20 percent of the membership of the committee) shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The Biological Safety Officer (BSO), mandatory when research is being conducted at the P3 and P4 levels, shall be a member (see Section IV-D-4).

IV-D-2-b. In order to ensure the professional competence necessary to review recombinant DNA activities, it is recommended that (i) the IBC include persons from disciplines relevant to recombinant DNA technology, biological safety, and engineering; (ii) the IBC include, or have available as consultants, persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be a nondoctoral person from a laboratory technical staff.

IV-D-2-c. The Institution shall identify the committee members by name in a report to the NIH Office of Recombinant DNA Activities (ORDA) and shall include relevant background information on each member in such form and at such times as ORDA may require. (See the Administrative Practices Supplement for further guidance.)

IV-D-2-d. No member of an IBC may be involved (except to provide information requested by the IBC) in the review or approval of a project in which he or she has been, or expects to be, engaged or has a direct financial interest.

IV-D-2-e. The Institution may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV-D-3-a.)

IV-D-2-f. Central to implementation of the Guidelines is the review of proposed experiments by the IBC. The Institution shall submit, within 30 days of IBC approval, an MUA to NIH (ORDA), or shall otherwise register proposed experiments as specified under Sections IV-D-1-c, IV-D-1-d, and IV-F. In carrying out this responsibility, the Institution shall comply with instructions and procedures specified in the Administrative Practices Supplement.

IV-D-2-g. Institutions are encouraged to open IBC meetings to the public whenever possible, consistent with protection of privacy and proprietary interests.

IV-D-2-h. Upon request, the Institution shall make available to the public all minutes of IBC meetings and any documents submitted to or received from funding agencies which the latter are required to make available to the public (e.g., MUAs, reports of Guideline violations and significant research-related accidents, and agency directives to modify projects). If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and the IBC's response.

IV-D-3. *Functions of the IBC.* On behalf of the Institution, the IBC is responsible for:

IV-D-3-a. Reviewing for compliance with the NIH Guidelines all recombinant DNA research to be conducted at or sponsored by the Institution, and approving those research projects that it finds are in conformity with the Guidelines. [See Administrative Practices Supplement, II-D, for prior NIH approval requirements.] This review shall include:

IV-D-3-a(1). An independent assessment of the containment levels required by these Guidelines for the proposed research, and

IV-D-3-a(2). An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel.

Note.—See Laboratory Safety Monograph (pages 187-190) for suggested guidance in conducting this review.

IV-D-3-b. Authorizing the Principal Investigator (PI) to proceed with the project upon receipt of proper agency approval; or authorizing the PI to proceed without agency approval to initiate or change a project for which none of the exceptions under IV-D-1-c apply.

Note.—Some examples of work that might ordinarily proceed without prior funding-agency approval are the initiation of a project at the P1 or P2 level (other than the first project at the institution). Other examples are significant changes in hosts or vectors, in the donor species or the nature of the DNA segment selected, or in the physical location of the experiments. It should be clear, however, that the funding agency must be notified of IBC approvals even when prior agency approval is not required. See the Administrative Practices Supplement for further discussion.

IV-D-3-c. Reviewing periodically recombinant DNA research being conducted at the Institution, to ensure that the requirements of the Guidelines are being fulfilled.

IV-D-3-d. Adopting emergency plans covering accidental spills and personnel contamination resulting from such research.

Note.—Basic elements in developing specific procedures for dealing with major spills or potentially hazardous materials in the laboratory are detailed in the Laboratory Safety Monograph. Included are information and references on decontamination and emergency plans. NIH and the Center for Disease Control are available to provide consultation, and direct assistance if necessary, as posted in the LSM. The Institution shall cooperate with the State and local public health departments, reporting any significant research-related illness or accident that appears to be a hazard to the public health.

IV-D-3-e. Reporting within 30 days to the appropriate institutional official and to the NIH Office of Recombinant DNA Activities (ORDA) any significant problems with or violations of the Guidelines, and any significant research-related accidents or illnesses, unless the IBC determines that the PI has done so.

IV-D-3-f. Performing such other functions as may be delegated to the IBC under Section IV-D-1.

IV-D-4. *Biological Safety Officer.* The Institution shall appoint a BSO if it engages in recombinant DNA research at the P3 or P4 containment level. The officer shall be a member of the Institutional Biosafety Committee (IBC), and his or her duties shall include (but need not be limited to):

IV-D-4-a. Ensuring through periodic inspection that laboratory standards are rigorously followed;

IV-D-4-b. Reporting to the IBC and the Institution all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses of which the BSO becomes aware, unless the BSO determines that the Principal Investigator (PI) has done so.

IV-D-4-c. Developing emergency plans for dealing with accidental spills and personnel contamination, and investigating recombinant DNA research laboratory accidents;

IV-D-4-d. Providing advice on laboratory security;

IV-D-4-e. Providing technical advice to the PI and the IBC on research safety procedures.

Note.—See Laboratory Safety Monograph for additional information on the duties of the BSO.

IV-D-5. *Principal Investigator.* On behalf of the Institution, the PI is responsible for complying fully with the Guidelines in conducting any recombinant DNA research.

IV-D-5-a. *PI—General.* As part of this general responsibility, the PI shall:

IV-D-5-a-(1). Initiate or modify no recombinant DNA research subject to the Guidelines until that research, or the proposed modification thereof, has been approved by the Institutional Biosafety Committee (IBC) and has met all other requirements of the Guidelines and the Administrative Practices Supplement (APS), and make changes to conform if the NIH office of Recombinant DNA Activities' (ORDA's) review so requires; (NOTE: No prior approval by the IBC is required for most experiments described in Section III-O.)

IV-D-5-a-(2). Report within 30 days to the IBC and NIH (ORDA) all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses;

IV-D-5-a-(3). Report to the IBC and to NIH (ORDA) new information bearing on the Guidelines;

IV-D-5-a-(4). Be adequately trained in good microbiological techniques;

IV-D-5-a-(5). Adhere to IBC-approved emergency plans for dealing with accidental spills and personnel contamination; and

IV-D-5-a-(6). Comply with shipping requirement for recombinant DNA molecules. (See Section II-C for shipping requirements, Laboratory Safety Monograph for technical recommendations, and the APS for administrative instructions and procedures. The requesting laboratory must be in compliance with the NIH Guidelines and under appropriate review by its IBC, and the sending investigator must maintain a record of

all shipments of recombinant DNA materials.)

IV–D–5–b. *Submissions by the PI to NIH.* The PI shall:

IV–D–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

IV–D–5–b–(2). Petition NIH, with notice to the IBC, for exemptions to these Guidelines (see Sections I–E–4 and I–E–5 and, for additional information on procedures, the APS); and

IV–D–5–b–(3). Petition NIH, with concurrence of the IBC, for exceptions to the prohibitions under these Guidelines (see Section I–D and, for additional information on procedures, the APS).

IV–D–5–c. *Submissions by the PI to the IBC.* The PI shall:

IV–D–5–c–(1). Make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines;

IV–D–5–c–(2). Select appropriate microbiological practices and laboratory techniques to be used in the research;

IV–D–5–c–(3). Submit the initial research protocol (and also subsequent changes—e.g., changes in the source of DNA or host-vector system, which require a new or revised Memorandum of Understanding and Agreement) to the IBC for review and approval or disapproval; and

IV–D–5–c–(4). Remain in communication with the IBC throughout the conduct of the project.

IV–D–5–d. *PI Responsibilities After Approval but Prior to Initiating the Research.* The PI is responsible for:

IV–D–5–d–(1). Making available to the laboratory staff copies of the approved protocols that describe the potential biohazards and the precautions to be taken;

IV–D–5–d–(2). Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents; and

IV–D–5–d–(3). Informing the staff of the reasons and provisions for any precautionary medical practices advised or requested, such as vaccinations or serum collection.

IV–D–5–e. *PI Responsibilities During the Conduct of the Approved Research.* The PI is responsible for:

IV–D–5–e–(1). Supervising the safety performance of the staff to ensure that the required safety practices and techniques are employed;

IV–D–5–e–(2). Investigating and reporting in writing to ORDA, the Biological Safety Officer (where applicable), and the IBC any significant problems pertaining to the operation and implementation of containment practices and procedures;

IV–D–5–e–(3). Correcting work errors and conditions that may result in the release of recombinant DNA materials;

IV–D–5–e–(4). Ensuring the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity, and genotypic and phenotypic characteristics); and

IV–D–5–e–(5). *Publications.* PIs are urged to include, in all publications reporting on recombinant DNA research, a description of the physical and biological containment procedures employed.

IV–E. *Responsibilities of NIH*

IV–E–1. *Director.* The Director, NIH, is responsible for (i) establishing the NIH Guidelines on recombinant DNA research, (ii) overseeing their implementation, and (iii) their final interpretation.

The Director has a number of responsibilities under the Guidelines that involve the NIH Office of Recombinant DNA Activities (ORDA) and the Recombinant DNA Advisory Committee (RAC). ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public comment, with published response, before final action.

IV–E–1–a. *General Responsibilities of the Director, NIH.* The responsibilities of the Director shall include the following:

IV–E–1–a–(1). Promulgating requirements as necessary to implement the Guidelines;

IV–E–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–E–2. The RAC's membership is specified in its charter and in Section IV–E–2.

IV–E–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–E–3; and

IV–E–1–a–(4). Maintaining the Federal Interagency Advisory Committee on Recombinant DNA Research established by the Secretary, HEW, for advice on the coordination of all Federal programs and activities relating to recombinant DNA, including activities of the RAC.

IV–E–1–b. *Specific Responsibilities of the Director, NIH.* In carrying out the responsibilities set forth in this Section, the Director shall weigh each proposed action, through appropriate analysis and consultation, to determine that it complies with the Guidelines and presents no significant risk to health or the environment.

IV–E–1–b–(1). *The Director is responsible for the following major actions* (For these, the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the Federal Register at least 30 days before the meeting, and the Director will also publish the proposed actions in the Federal Register for comment at least 30 days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the Federal Register for 30 days of comment before final action is taken. The Director's final decision, along with response to the comments, will be published in the Federal Register and the *Recombinant DNA Technical Bulletin.* The RAC and IBC chairpersons will be notified of this decision):

IV–E–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the Guidelines when a major action is involved;

IV–E–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved;

IV–E–1–b–(1)–(c). Certifying new host-vector systems, with the exception of minor modifications of already certified systems (The standards and procedures for certification are described in Section II–D–2–a. Minor modifications constitute, for example, those of minimal or no consequence to the properties relevant to containment. See the Administrative Practices Supplement (APS) for further information);

IV–E–1–b–(1)–(d). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from these Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes, or otherwise do not present a significant risk to health or the environment (see Sections I–E–4 and –5 and the APS for further information);

IV–E–1–b–(1)–(e). Permitting exceptions to the prohibited experiments in the Guidelines, in order, for example, to allow risk-assessment studies; and

IV–E–1–b–(1)–(f). Adopting other changes in the Guidelines.

IV–E–1–b–(2). *The Director is also responsible for the following lesser actions* (For these, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*):

IV–E–1–b–(2)–(a). Interpreting and determining containment levels, upon request by ORDA;

IV–E–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

IV–E–1–b–(2)–(c). Assigning containment levels for experiments not explicitly considered in the Guidelines (see Section III); and

IV–E–1–b–(2)–(d). Designating certain class 2 agents as class 1 for the purpose of these Guidelines (see Footnote 1 and Appendix B).

IV–E–1–b–(3). *The Director is also responsible for the following actions* (The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin):*

IV–E–1–b–(3)–(a). Interpreting the Guidelines for experiments to which the Guidelines specifically assign containment levels;

IV–E–1–b–(3)–(b). Determining appropriate containment conditions for experiments according to case precedence developed under Section IV–E–1–b–(2)–(c).

IV–E–1–b–(3)–(c). Determining appropriate containment conditions upon case-by-case analysis of experiments explicitly considered in the Guidelines but for which no containment levels have been set (see Footnote 45 in Part V; Sections III–C–1–a through –e; and Sections III–C–2 and –3);

IV–E–1–b–(3)–(d). Authorizing, under procedures specified by the RAC, large-scale experiments (i.e., involving more than 10 liters of culture) for recombinant DNAs that are rigorously characterized and free of harmful sequences (see Footnote 3 and Section I–D–6);

IV–E–1–b–(3)–(e). Lowering containment levels for characterized clones or purified DNA (see Sections III–A–3–a and –b, and Footnotes 3 and 41);

IV–E–1–b–(3)–(f). Approving minor modifications of already certified host-vector systems (The standards and procedures for such modifications are described in Section II–D–2–a); and

IV–E–1–b–(3)–(g). Decertifying already certified host-vector systems.

IV–E–1–b–(4). The Director shall conduct, support, and assist training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers, Principal Investigators, and laboratory staff.

IV–E–1–b–(5). The Director, at the end of 36 months from the time these Guidelines are promulgated, will report on the Guidelines, their administration, and the potential risks and benefits of this research. In doing so, the Director will consult with the RAC and the Federal Interagency Committee. Public comment will be solicited on the draft report and taken into account in transmitting the final report to the Assistant Secretary for Health and the Secretary, HEW.

IV–E–2. *Recombinant Advisory Committee.* The NIH Recombinant DNA Advisory Committee (RAC) is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the Secretary, HEW, the Assistant Secretary for Health, and the Director, NIH.

The members of the committee shall be chosen to provide, collectively, expertise in scientific fields relevant to recombinant DNA technology and biological safety—e.g., microbiology, molecular biology, virology, genetics, epidemiology, infectious diseases, the biology of enteric organisms, botany, plant pathology, ecology, and tissue culture. At least 20 percent of the members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as nonvoting members. Nominations for the RAC may be submitted to the NIH Office of Recombinant DNA Activities.

All meetings of the RAC will be announced in the Federal Register, including tentative agenda items, 30 days in advance of the meeting, with final agendas (if modified) available at least 72 hours before the meeting. No item defined as a major action under Section IV–E–1–b–(1) may be added to an agenda after it appears in the Federal Register.

IV–E–2–a. *The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV–E–1–b–(1) and –(2).*

IV–E–3. *The Office of Recombinant DNA Activities.* ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH, including Institutions, Biological Safety Committees, Principal Investigators, Federal agencies, State and local governments and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the Director, NIH, including those authorities described in Section IV–E–1–b–(3). In addition, ORDA shall be responsible for the following:

IV–E–3–a. Review and approval of Institutional Biosafety Committee (IBC) membership;

IV–E–3–b. Registration of recombinant DNA projects; and

IV–E–3–c. Review of Memoranda of Understanding and Agreement (MUAs), and approval of those that conform to the Guidelines. In so doing, ORDA shall:

IV–E–3–c–(1). Conduct an independent evaluation of the containment levels required for the research covered by these Guidelines;

IV–E–3–c–(2). Determine whether the physical and biological containment levels approved by the IBC are in accordance with the requirement of the Guidelines;

IV–E–3–c–(3). Notify Institutions and the IBC chairperson in a timely fashion when MUAs (including changes in ongoing projects) do not conform to the Guidelines, and inform them of corrective measures to be taken;

IV–E–3–c–(4). Publish in the Federal Register:

IV–E–3–c–(4)–(a). Announcements of Recombinant DNA Advisory Committee (RAC) meetings and agendas 30 days in advance, with publication of the Director's proposed decision for 30 days of public and Federal agency comment followed by a published response, on any action listed in Section IV–E–1–b–(1); and

IV–E–3–c–(4)–(b). Announcements of RAC meetings and agendas 30 days in advance on any action listed in Section IV–E–1–b–(2).

Note.—If the agenda for an RAC meeting is modified, ORDA shall make the revised agenda available to anyone, upon request, at least 72 hours in advance of the meeting.

IV–E–3–c–(5). Publish the *Recombinant DNA Technical Bulletin;* and

IV–E–3–c–(6). Serve as executive secretary to the RAC.

IV–E–4. *Other NIH Components.* Other NIH components shall be responsible for:

IV–E–4–a. Awarding no grant or contract involving recombinant DNA techniques unless a properly executed MUA has been received;

IV–E–4–b. Certifying P4 facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary; and

IV–E–4–c. Announcing and distributing certified HV2 and HV3 host-vector systems (see Section II–E–3).

(See Administrative Practices Supplement for additional information on the administrative procedures of ORDA and other NIH components.)

IV–F. *Registration*

IV–F–1. *Required Registration.* Institutions receiving NIH funds for recombinant DNA projects shall inform NIH of all recombinant DNA projects at the Institution. A non-NIH project, after approval by the Institutional Biosafety Committee, shall be registered with NIH within 30 days of initiation. Applications

for NIH projects must be accompanied by a Memorandum of Understanding and Agreement (MUA).

For information of MUAs or equivalent documents that must be submitted for registration of recombinant DNA projects, see the Administrative Practices Supplement (APS).

IV–F–2. *Federal Agency Registration.* Institutions at which recombinant DNA research projects funded by other Federal agencies are conducted need not register such projects with NIH when the Federal agency maintains a registry and provides such information to NIH. Registration of non-NIH-funded research with the NIH Office of Recombinant DNA Activities (ORDA) is described in the APS. (The information required is similar to that in an MUA for NIH-supported research.)

IV–F–3. *Voluntary Registration and Certification.* Any institution that is not required to comply with the Guidelines may nevertheless register recombinant DNA research projects with NIH by submitting the appropriate information to ORDA. NIH will accept requests for certification of host-vector systems proposed by the institution. The submitter must agree to abide by the physical and biological containment standards of the NIH Guidelines.

IV–F–4. *Disclosure of Information.* Institutions are reminded that they should consider applying for a patent before submitting information to DHEW which they regard as potentially proprietary. (Provisions for protection of proprietary information as permitted under current DHEW authorities are discussed in Part VI of these Guidelines.)

IV–G. *Compliance.* As a condition for NIH funding of recombinant DNA research, Institutions must ensure that such research conducted at or sponsored by the Institution, irrespective of the source of funding, shall comply with these Guidelines. The policies on noncompliance are as follows:

IV–G–1. All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the Institution, or (ii) a requirement for prior-NIH approval of any or all recombinant DNA projects at the Institution.

IV–G–2. All non-NIH-funded projects involving recombinant DNA techniques conducted at or sponsored by an Institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–G–3. Information concerning noncompliance with the Guidelines may be brought forward by any person. It should be delivered to both NIH (ORDA) and the relevant Institution. The Institution, generally through the IBC, shall take appropriate action. The Institution shall forward a complete report of the incident to ORDA, recommending any further action indicated.

IV–G–4. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the Guidelines, applicable DHEW and Public Health Service procedures shall govern.

IV–G–5. *Voluntary Compliance.* Any individual, corporation, or institution that is not otherwise covered by the Guidelines is encouraged to conduct recombinant DNA research activities in accordance with the Guidelines, through the procedures set forth in Part VI.

V. Footnotes and References

1. The reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. The list of organisms in each class, as given in this publication, is reprinted in Appendix B to these Guidelines.*

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may designate certain of the agents which are listed as Class 2 in the *Classification of Etiologic Agents on the Basis of Hazard,* 4th Edition, July 1974, as Class 1 agents for the Purposes of these Guidelines (see Section IV–E–1–b–(2)(d)). An updated list of such agents may be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205.

The entire *Classification of Etiologic Agents on the Basis of Hazard* is in the process of revision.

2. One exception to the prohibition of formation of recombinant DNAs derived from Class 3, 4, or 5 agents is that the formation of recombinant DNAs derived from Vesicular Stomatitis Virus (VSV) is not prohibited. The reason for this is explaned in the "Decision Document" accompanying the proposed revised guidelines published in the Federal Register on July 28, 1978. However, as noted in Appendix B, a permit from the U.S. Department of Agriculture is required for the import or interstate transport of VSV. This can be obtained from USDA—APHIS, Veterinary Service, Federal Building, Hyattsville, Maryland 20782.

2A. In Parts I and III of the Guidelines, there are a number of places where judgments are to be made. These include: "cells known to be infected with such agents" (Section I–D–1); "toxins potent for vertebrates" (Section I–D–2); "beyond that which occurs by natural genetic exchange" (Section I–D–3); known to acquire it naturally" (section I–D–5); "known to produce a potent polypeptide toxin . . . or known to carry such pathogens . . . not likely to be a product of closely linked eukaryote genes . . . shown not to contain such agents" (Section III–A–1–a–(5)–(a)); "shown to be free of disease causing microorganisms" (Section III–A–1–a–(5)–(b)); "close relatives" (Section III–C–3); and "produce a potent polypeptide toxin" (Footnote 34).

In all these cases the principal investigator is to make the initial judgment on these matters as part of his responsibility to "make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines" (Section IV–D–7–a). In all these cases, this judgment is to be reviewed and appoved by the Institutional Biosafety Committee as part of its responsibility to make "an independent assessment of the containment levels required by these Guidelines for the proposed research" (Section IV–D–3–a–(1)). If the IBC wishes, any specific cases may be referred to the NIH Office of Recombinant DNA Activities as part of ORDA's functions to "provide advice to all within and outside NIH" (Section IV–E–3), and ORDA may request advice from the Recombinant DNA Advisory Committee as part of the RAC's responsibility for "interpreting and determining containment levels upon request by ORDA" (Section IV–E–1–b–(2)–(a)).

3. The following types of data should be considered in determining whether DNA recombinants are "characterized" and the absence of harmful sequences has been established: (a) the absence of potentially harmful genes (e.g., sequences contained in indigenous tumor viruses or sequences that code for toxins, invasins, virulence factors, etc., that might potentiate the pathogenicity or communicability of the vector and/or the host or be detrimental to humans, animals, or plants); (b) the type(s) of genetic information on the cloned segment and the nature of transcriptional and translation gene products specified; (c) the relationship between the recovered and desired segment (e.g., hybridization and restriction endonuclease fragmentation analysis where applicable); (d) the genetic stability of the cloned fragment; and (e) any alternations in the biological properties of the vector and host.

4. In Section I–E, "exemptions" from the Guidelines are discussed. Such experiments are not covered by the Guidelines and need not be registered with NIH. In Section I–D on "prohibitions," the possibility of "exceptions" is discussed. An "exception" means that an experiment may be expressly released from a prohibition. At that time it will be assigned an appropriate level of physical and biological containment.

5. Care should be taken to inactivate recombinant DNA before disposal.

Procedures for inactivating DNA can be found in the "Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research."

6. *Laboratory Safety at the Center for Disease Control.* (Sept. 1974). U.S. Department of Health Education and Welfare Publication No. CDC 75-8118.

7. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education and Welfare. Public Health Service. Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

8. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75-790.

9. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740-00383.

10. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

11. *Handbook of Laboratory Safety* (1971). Second Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

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13. Darlow, H. M. (1969). *Safety in the Microbiological Laboratory.* In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc. New York. pp. 169-204.

14. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

15. Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures.* In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131-192.

16. *Design Criteria for Viral Oncology Research Facilities* (1975). U.S. Department of Health, Education and Welfare, Public Health Service, National Institutes of Health, DHEW Publication No. (NIH) 75-891.

17. Kuehne, R. W. (1973). *Biological Containment Facility for Studying Infectious Disease.* Appl. Microbiol. 26-239-243.

18. Runkle, R. S., and G. B. Phillips (1969). *Microbial Containment Control Facilities.* Van Nostrand Reinhold, New York.

19. Chatigny, M. A., and D. I. Clinger (1969). *Contamination Control in Aerobiology.* In R. L. Dimmick and A. B. Akers (eds.). An Introduction to Experimental Aerobiology. John Wiley & Sons, New York, pp. 194-263.

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20. Biological safety cabinets referred to in this section are classified as *Class I, Class II,* or *Class III* cabinets. A *Class I* is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high-efficiency particulate air (HEPA) filter. This cabinet is used in three operational modes: (1) with a full-width open front, (2) with an installed front closure panel (having four 8-inch diameter openings) without gloves, and (3) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. A *Class II* cabinet is a ventilated cabinet for personnel and product protection having an open front with inward air flow for personnel protection, and HEPA filtered mass recirculated air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and performance specifications for *Class II* cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A *class III* cabinet is a closed-front ventilated cabinet of gas-tight construction which provides the highest level of personnel protection of all biohazard safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water gauge. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filter and incinerator before being discharged to the outside environment.

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27. Bolivar, F., R. L. Rodriguez, R. J. Greene, M. C. Batlach, H. L. Reyneker, H. W. Boyer, J. H. Crosa, and S. Falkow (1977). *Construction and characterization of New Cloning Vehicles: II. A Multi-Purpose Cloning System.* Gene *2,* 95-113.

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32. Donoghue, D. J., and P. A. Sharp (1977). *An Improved Lambda Vector: Construction of Model Recombinants Coding for Kanamycin Resistance,* Gene *1,* 209-227.

33. Leder, P., D. Tiemeier and L. Enquist (1977). *EK2 Derivatives of Bacteriophage Lambda Useful in the Cloning of DNA from Higher Organisms: The gt WES System.* Science *196,* 175-177.

33A. Skalka, A. (1978). *Current Status of Coliphage EK2 Vectors.* Gene *3,* 29-35.

33B. Szybalski, W., A. Skalka, S. Gottesman, A. Campbell, and D. Botstein (1978). *Standardized Laboratory Tests for EK2 Certification.* Gene *3,* 36-38.

34. We are specifically concerned with the remote possibility that potent toxins could be produced by acquiring a single gene or cluster of genes. See also footnote 2A.

35. Defined as observable under optimal laboratory conditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less strigent than that applied to exempt organisms under Section I-E-4.

36. As classified in the Second Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, Frank Fenner, Ed. Intervirology *7* (19-115) 1976. (As noted in the Prohibition Section, the use of viruses classfied[1] as Class 3, 4, or 5, other than VSV, is prohibited.)

37. The cDNA copy of the viral mRNA must be >99% pure; otherwise as for shotgun experiments with eukaryotic cellular DNA.

37A. For the purpose of these Guidelines, viruses of the families *Papovaviridae, Adenoviridae,* and *Herpetoviridae* (38) should be considered as "transforming" viruses. While only certain of these viruses have been associated with cell transformation *in vivo* or *in vitro,* it seems prudent to consider all members to be potentially capable of transformation. In addition, those viruses of the family *Poxviridae* that produce proliferative responses—i.e., myxoma, rabbit and squirrel fibroma, and Yaba viruses—should be considered as "transforming."

38. >99% pure (i.e., less than 1% of the DNA consists of intact viral genomes); otherwise as for whole genomes.

39. The viruses have been classified by NCI as "moderate-risk oncogenic viruses." See "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research" for

recommendations on handling the viruses themselves.

40. HV1CV means the use of an HV1 host and a vector certified for use in an HV2 system.

41. The DNA preparation is defined as "purified" if the desired DNA represents at least 99% (w/w) of the total DNA in the preparation, provided that it was verified by more than one procedure.

42. The lowering of the containment level when this degree of purification has been obtained is based on the fact that the total number of clones that must be examined to obtain the desired clone is markedly reduced. Thus, the probability of cloning a harmful gene could, for example, be reduced by more than 10-fold when a nonrepetitive gene from mammals was being sought. Furthermore, the level of purity specified here makes it easier to establish that the desired DNA does not contain harmful genes.

43. This is not permitted, of course, if it falls under any of the Prohibitions of Section I–D. Of particular concern here is prohibition I–D–5, i.e., "Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally, if such acquisition could compromise the use of a drug to control disease agents in human or veterinary medicine or agriculture."

44. Because this work will be done almost exclusively in tissue culture cells, which have no capacity for propagation outside the laboratory, the primary focus for containment is the vector. It should be pointed out that risk of laboratory-acquired infection as a consequence of tissue culture manipulation is very low. Given good microbiological practices, the most likely mode of escape of recombinant DNAs from a physically contained laboratory is carriage by an infected human. Thus the vector with an inserted DNA segment should have little or no ability to replicate or spread in humans.

For use as a vector in a vertebrate host-cell system, an animal viral DNA molecule should display the following properties:

(i) It should not consist of the whole genome of any agent that is infectious for humans or that replicates to a significant extent in human cells in tissue culture. If the recombinant molecule is used to transform nonpermissive cells (i.e., cells which do not produce infectious virus particles), this is not a requirement.

(ii) It should be derived from a virus whose epidemiological behavior and host range are well understood.

(iii) In permissive cells, it should be defective when carrying an inserted DNA segment (i.e., propagation of the recombinant DNA as a virus must be dependent upon the presence of a complementing helper genome). In most all cases this condition would be achieved automatically by the manipulations used to construct and propagate the recombinants. In addition, the amount of DNA encapsidated in the particles of most animal viruses is defined within fairly close limits. The insertion of sizable foreign DNA sequences, therefore, generally demands a compensatory deletion of viral sequences. It may be possible to introduce very short insertions (50–100 base pairs) without rendering the viral vector defective. In such a situation, the requirement that the viral vector be defective is not necessary, except in those cases in which the inserted DNA encodes a biologically active polypeptide.

It is desired but not required that the functional anatomy of the vector be known—that is, there should be a clear idea of the location within the molecule of:

(i) the sites at which DNA synthesis originates and terminates,

(ii) the sites that are cleaved by restriction endonucleases, and

(iii) the template regions for the major gene product.

If possible the helper virus genome should:

(i) be integrated into the genome of a stable line of host cells (a situation that would effectively limit the growth of the vector recombinant to such cell lines) or

(ii) consist of a defective genome, or an appropriate conditional lethal mutant virus, making vector and helper dependent upon each other for propagation.

However, neither of these stipulations is a requirement.

45. Review by NIH on a case-by-case basis means that NIH must review and set appropriate containment conditions before the work may be undertaken. NIH actions in such case-by-case reviews will be published in the *Recombinant DNA Technical Bulletin.*

46. Provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated on a case-by-case basis.

47. >99% pure; otherwise as for shotgun experiments.

VI. Voluntary Compliance

VI–A. *Basic Policy.* Individuals, corporations, and institutions not otherwise covered by the Guidelines are encouraged to do so by following the standards and procedures set forth in Parts I–IV of the Guidelines. In order to simplify discussion, references hereafter to "institutions" are intended to encompass corporations, and individuals who have no organizational affiliation. For purposes of complying with the Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the Guidelines.

Since commercial organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures in Parts I–IV are provided below, in order to address these concerns.

VI–B. *IBC Approval.* The NIH Office of Recombinant DNA Activities (ORDA) will review the membership of an institution's Institutional Biosafety Committee (IBC) and, where it finds the IBC meets the requirements set forth in Section IV–D–2, will give its approval to the IBC membership.

It should be emphasized that employment of an IBC member solely for purposes of membership on the IBC does not itself make the member an institutionally affiliated member for purposes of Section IV–D–2–a.

Except for the unaffiliated members, a member of an IBC for an institution not otherwise covered by the Guidelines may participate in the review and approval of a project in which the member has a direct financial interest, so long as the member has not been and does not expect to be engaged in the project. Section IV–D–2–d is modified to that extent for purposes of these institutions.

VI–C. *Registration.* Upon approval of a recombinant DNA research project by the IBC, an institution may register the project by submitting to ORDA the information required in the Administrative Practices Supplement.

VI–D. *Certification of Host–Vector Systems.* A host-vector system may be proposed for certification by the Director, NIH, in accordance with the procedures set forth in Section II–D–2–a.

Institutions not otherwise covered by the Guidelines will not be subject to Section II–D–3 by complying with these procedures.

In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section VI–F–1 will be issued only after consultation with the institution as to the content of the notice.

VI–E. *Requests for Exceptions, Exemptions, Approvals.* Requests for exceptions from prohibitions, exemptions, or other approvals required by the Guidelines should be requested by following the procedures set forth in the appropriate sections in Parts I–IV of the Guidelines.

In order to ensure protection for proprietary data, any public notice regarding a request for an exception, exemption, or other approval which is designated by the institution as proprietary under Section VI–F–1 will be issued only after consultation with the institution as to the content of the notice.

VI–F. *Protection of Proprietary Data.* In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "trade secrets and commercial and financial information obtained from a person and privileged or confidential." 18 U.S.C. 1905, in turn makes it a crime for an officer or employee of the United States or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any

extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, [or] processes . . . of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the Recombinant DNA Advisory Committee are "special Government employees."

VI–F–1. In submitting information to NIH for purposes of complying voluntarily with the Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets or privileged or confidential commercial or financial information.

VI–F–2. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released.

VI–F–3. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised, except to the extent that earlier release, in the judgment of the Director, NIH, is necessary to protect against an imminent hazard to the public or the environment.

VI–F–4. Projects should be registered in accordance with procedures specified in the *Administrative Practices Supplement.* The following information will usually be considered publicly available information, consistent with the need to protect proprietary data:

a. The names of the institution and principal investigator.

b. The location where the experiments will be performed.

c. The host-vector system.

d. The source of the DNA.

e. The level of physical containment.

VI–F–5–a. Any institution not otherwise covered by the Guildelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine whether, if the records are submitted, NIH will or will not make part or all of the records available upon request under the Freedom of Information Act.

VI–F–5–b. A request for presubmission review should be submitted to ORDA, along with the records involved. These records must be clearly marked as being the property of the institution, on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. ORDA will then seek a determination from the HEW Freedom of Information Officer, the responsbile offical under HEW regulations (45 CFR Part 5), as to whether the records involved (or some portion) are or are not available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from ORDA files, will be considered records of the institution and not ORDA, and will not be received as part of ORDA files. No copies will be made of the records.

VI–F–5–c. ORDA will inform the institution of the HEW Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of ORDA files. If the institution instructs ORDA to return the records, no copies or summaries of the records will be made or retained by HEW, NIH, or ORDA.

VI–F–5–d. The HEW Freedom of Information Officer's determination will represent that official's judgment, as of the time of the determination, as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act, if at the time of the determination the records were in ORDA files and a request were received from them under the Act.

Appendix A

Section I–E–4 states that exempt from these Guidelines are "certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment (see Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A."

Under exemption I–E–4 of these revised Guidelines are recombinant DNA molecules that are (1) composed entirely of DNA segments from one or more of the organisms within a sublist and (2) to be propagated in any of the organisms within a sublist. (Classification of *Bergey's Manual of Determinative Bacteriology*, eighth edition. R. E. Buchanan and N. E. Gibbons, editors. Williams and Wilkins Company: Baltimore, 1974.)

Sublist A

1. Genus *Escherichia*
2. Genus *Shigella*
3. Genus *Salmonella* (including *Arizona*)
4. Genus *Enterobacter*
5. Genus *Citrobacter* (including *Levinea*)
6. Genus *Klebsiella*
7. *Erwinia amylovora*
8. *Pseudomonas aeruginosa, Pseudomonas putida* and *Pseudomonas fluorescens*
9. *Serratia marcescens*

Sublist B

1. *Bacillus subtilis*
2. *Bacillus licheniformis*
3. *Bacillus pumilus*
4. *Bacillus globigii*
5. *Bacillus niger*
6. *Bacillus nato*
7. *Bacillus amyloliquefaciens*
8. *Bacillus aterrimus*

Sublist C

1. *Streptomyces aureofaciens*
2. *Streptomyces rimosus*
3. *Streptomyces coelicolor*

Sublist D

1. *Streptomyces griseus*
2. *Streptomyces cyaneus*
3. *Streptomyces venezuelae*

Appendix B—Classification of Microorganisms on the Basis of Hazard

I. Classification of Etiologic Agents on the Basis of Hazard (1)

A. Class 1 Agents

All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes.

B. Class 2 Agents

1. Bacterial Agents:

Actinobacillus—all species except *A. mallei*, which is in Class 3.

Arizona hinshawii–all serotypes.

Bacillus anthracis.

Bordetella—all species.

Borrelia recurrentis, B. vincenti.

Clostridium botulinum, Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani.

Corynebacterium diptheriae, C. equi, C. haemolyticum, C. pseudotuberculosis, C. pyogenes, C. renale.

Diplococcus (Streptococcus) pneumoniae.

Erysipelothrix insidiosa.

Escherichia coli—all enteropathogenic serotypes.

Haemophilus ducreyi, H. influenzae.

Herellae vaginicola.

Klebsiella—all species and all serotypes.

Leptospira interrogans—all serotypes.

Listeria—all species.

Mima polymorpha.

Moraxella—all species.

Mycobacteria—all species except those listed in Class 3.

Mycoplasma—all species except *Mycoplasma mycoides* and *Mycoplasma agalactiae*, which are in Class 5.

Neisseria gonorrhoeae, N. meningitidis.

Pasteurella—all species except those listed in Class 3.

Salmonella—all species and all serotypes.
Shigella—all species and all serotypes.
Sphaerophorus necrophorus.
Staphylococcus aureus.
Streptobacillus moniliformis.
Streptococcus pyogenes.
Treponema carateum, T. pallidum, and *T. pertenue.*
Vibrio fetus, V. comma, including biotype El Tor, and *V. parahemolyticus.*
Fungal Agents:
Actinomycetes [1] (including *Nocardia* species and *Actinomyces* species and *Arachnia propionica*).
Blastomyces dermatitidis.
Cryptococcus neoformans.
Paracoccidioides brasiliensis.
3. Parasitic Agents:
Endamoeba histolytica.
Leishmania sp.
Naegleria gruberi.
Toxoplasma gondii.
Toxocara canis.
Trichinella spiralis.
Trypanosoma cruzi.
4. Viral, Rickettsial, and Chlamydial Agents:
Adenoviruses—human—all types.
Cache Valley virus.
Coxsackie A and B viruses.
Cytomegaloviruses.
Echoviruses—all types.
Encephalomyocarditis virus (EMC).
Flanders virus.
Hart Park virus.
Hepatitis-associated antigen material.
Herpes viruses—except *Herpesvirus simiae* (Monkey B virus) which is in Class 4.
Corona viruses.
Influenza viruses—all types except A/PR8/34, which is in Class 1.
Langat virus.
Lymphogranuloma venereum agent.
Measles virus.
Mumps virus.
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1.
Poliovirus—all types, wild and attenuated.
Poxviruses—all types except *Alastrim, Smallpox, Monkey pox, and Whitepox,* which depending on experiments, are in Class 3 or Class 4.
Rabies virus—all strains except *Rabies street virus,* which should be classified in Class 3 when inoculated into carnivores.
Reovirusis—all types.
Respiratory syncytial virus.
Rhinoviruses—all types.
Rubella virus.
Simian viruses—all types except *Herpesvirus simiae (Monkey B virus) and Marburg virus,* which are in Class 4.
Sindbis virus.
Tensaw virus.
Turlock virus.
Vaccinia virus.
Varicella virus.
Vole rickettsia.
Yellow fever virus, 17D vaccine strain.

C. Class 3 Agents

1. Bacterial Agents:
Actinobacillus mallei [2].
Bartonella—all species.
Brucella—all species.
Francisella tularensis.
Mycobacterium avium, M. bovis, M. tuberculosis.
Pasteurella multocide type B ("buffalo" and other foreign virulent strains [2]).
Pseudomonas pseudomallei [2].
Yersenia pestis.
2. Fungal Agents:
Coccidioides immitis.
Histoplasma capsulatum.
Histoplasma capsulatum var. *duboisii.*
3. Parasitic Agents: *Schistosoma mansoni.*
4. Viral, Rickettsial, and Chlamydial Agents:
Alastrim, Smallpox, Monkey pox, and Whitepox, when used *in vitro.*
Arboviruses—all strains except those in Class 2 and 4. [Arboviruses indigenous to the United States are in Class 3, except those listed in Class 2. *West Nile* and *Semliki Forest* viruses may be classified up or down, depending on the conditions of use and geographical location of the laboratory.]
Dengue virus, when used for transmission or animal inoculation experiments.
Lymphocytic choriomeningitis virus (LCM).
Psittacosis-Ornithosis-Trachoma group of agents.
Rabies street virus, when used in inoculations of carnivores [See Class 2].
Rickettsia—all species except *Vole rickettsia* when used for transmission or animal inoculation experiments.
Vesicular stomatitis virus [2].
Yellow fever virus—wild, when used *in vitro.*

D. Class 4 Agents

1. Bacterial Agents: None.
2. Fungal Agents: None.
3. Parasitic Agents: None
4. Viral, Rickettsial, and Chlamydial Agents:
Alastrim, Smallpox, Monkey pox, and Whitepox, when used for transmission or animal inoculation experiments.
Hemorrhagic fever agents, including *Crimean hemorrhagic fever (Congo), Junin,* and *Machupo* viruses, and others as yet undefined.
Herpesvirus simiae (Monkey B virus).
Lassa virus.
Marburg virus.
Tick-borne encephalitis virus complex, including *Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever,* and *Central European encephalitis viruses.*
Venezuelan equine encephalitis virus, epidemic strains, when used for transmission or animal inoculation experiments.
Yellow fever virus—wild, when used for transmission or animal inoculation experiments.

II. Classification of Oncogenic Viruses on the Basis of Potential Hazard (2)

A. Low Risk Oncogenic Viruses

Rous Sarcoma.
SV-40.
CELO.
Ad7-SV40.
Polyoma.
Bovine papilloma.
Rat mammary tumor.
Avian Leukosis.
Murine Leukemia.
Murine Sarcoma.
Mouse mammary tumor.
Rat Leukemia.
Hamster Leukemia.
Bovine Leukemia.
Dog Sarcoma.
Mason-Pfizer Monkey Virus.
Marek's.
Guinea Pig Herpes.
Lucké (Frog).
Adenovirus.
Shope Fibroma.
Shope Papilloma.

B. Moderate-Risk Oncogenic Viruses

Ad2-SV40.
FeLV.
HV Saimiri.
EBV.
SSV-1.
GaLV.
HV ateles.
Yaba.
FeSV.

III. Animal Pathogens (3)

A. Animal disease organisms which are forbidden entry into the United States by Law (CDC Class 5 agent)

1. Foot and mouth disease virus.

B. Animal disease organisms and vectors which are forbidden entry into the United States by USDA Policy (CDC Class 5 Agents)

African horse sickness virus.
African swine fever virus.
Besnoitia besnoiti.
Borna disease virus.
Bovine infectious petechyial fever.
Camel pox virus.
Ephemeral fever virus.
Fowl plague virus.
Goat pox virus.
Hog cholera virus.
Louping ill virus.
Lumpy skin disease virus.
Nairobi sheep disease virus.
Newcastle disease virus (Asiatic strains).
Mycoplasma mycoides (contagious bovine pleuropneumonia).
Mycoplasma agalactia (contagious agalactia of sheep).
Rickettsia ruminatium (heart water).
Rift valley fever virus.
Rinderpest virus.
Sheep pox virus.
Swine vesicular disease virus.
Teschen disease virus.
Trypanosoma vivax (Nagana).
Trypanosoma evansi.
Theileria parva (East Coast fever).
Theileria annulata.
Theileria lawrencei.
Theileria boris.
Theileria hirci.
Vesicular exanthema virus.
Wesselsbron disease virus.
Zyonema farciminosum (pseudofarcy).

[1] Since the publication of the classification in 1974 [1], the *Actinomycetes* have been reclassified as bacterial rather than fungal agents.

[2] USDA permit also required for import or interstate transport.

References

1. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

2. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (October 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75-790.

3. U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Appendix C

Section I-E-5 states that exempt from these Guidelines are "Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV-E-1-b-(1)-(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C."

Under exemption I-E-5 of these Revised Guidelines are those recombinant DNA molecules that are propagated and maintained in cells in tissue culture and that are derived entirely from non-viral components (that is, no component is derived from a eukaryotic virus).

Appendix D

As noted above at the beginning of Section III-A, certain HV1 and HV2 host-vector systems are assigned containment levels as specified in the subsections of Section III-A. Those so classified as of publication of these Revised Guidelines are listed below.

*HV1—Unmodified laboratory strains of *Saccharomyces cerevisiae*

*HV1—The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion: (1) inl (inositolless) strains 37102, 37401, 46316, 64001 and 89601.

(2) csp-1 strain UCLA37 and csp-2 strains FS 590, UCLA101 (these are conidial separation mutants).

(3) eas strain UCLA191 (an "easily wettable" mutant.

HV1—Asporogenic mutant derivatives of *B. subtilis.* These derivatives must not revert to sporeformers with a frequency greater than 10^{-7}; data confirming this requirement must be presented to NIH for certification. The following plasmids are accepted as the vector components of certified *B. subtilis* HV1 systems: pUBllo, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223.

*HV2—The following sterile strains of *Saccharomyces cerevisiae,* all of which have the ste-VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, Yip32, and YIp33. These plasmids can be considered EK2 vectors when propagated in 1776.

Appendix E

As noted in the subsections of Section IV-E-1-b-(1) the Director, NIH, may take certain actions with regard to the Guidelines after public notice and RAC consideration.

Some of the actions taken to date include the following:

- The following experiment has been approved: The cloning in *B. subtilis,* under P2 conditions, of DNA derived from *Saccharomyces cerevisiae* using EK2 plasmid vectors provided that an HV1 *B. subtilis* host is used.
- Unmodified laboratory strains of *Neurospora crassa* can be used in all experiments for which HV1 *N. crassa* systems are approved provided that these are carried out at physical containment one level higher than required for HV1. However, if P3 containment is specified for HV1 *N. crassa,* this level is considered adequate for unmodified *N. crassa.* For P2 physical containment, special care must be exercised to prevent aerial dispersal of macroconidia, including the use of a biological safety cabinet.
- P2 physical containment shall be used for DNA recombinants produced between members of the genera *Streptomyces* and *Micromonospora* except for those species which are known to be pathogenic for man, animals or plants [2A].
- Cloned desired fragments from any non-prohibited source may be transferred into *Agrobacterium tumefaciens* containing a Ti plasmid (or derivatives thereof), using a nonconjugative E. coli plasmid vector coupled to a fragment of the Ti plasmid and/or the origin of replication of an *Agrobacterium* plasmid, under containment conditions one step higher than would be required for the desired DNA in HV1 systems (i.e. one step higher physical containment than that specified in the subsections of Section III-A). Transfer into plant parts or cells in culture would be permitted at the same containment level (one step higher).
- *Bacillus subtilis* strains that do not carry an asporogenic mutation can be used as hosts specifically for the cloning of DNA derived from *E. coli* K-12 and *Streptomyces coelicolor* using NIH-approved *Staphylococcus aureus* plasmids as vectors under P2 conditions.
- *Streptomyces coelicolor* can be used as a host for the cloning of DNA derived from *B. subtilis, E. coli* K-12, or from *S. aureus* vectors that have been approved for use in *B. subtilis* under P2 conditions.

Dated: November 26, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

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BILLING CODE 4110-08-M

* These follow the assigned containment levels as specified in the subsections of Section III-A with one exception. This exception is that experiments involving complete genomes of eukaryotic viruses will require P3+HV1 or P2+HV2 rather than the levels given in the subsections of Section III-A.

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HEW.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth actions proposed by the Director, NIH, under the 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules (43 FR 60108), and introduces the publication of proposed NIH Guidelines.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205. (301) 496-6051.

SUPPLEMENTARY INFORMATION: I am today issuing for public comment proposed revised NIH Guidelines for Research Involving Recombinant DNA Molecules. This action is taken in accordance with Section IV-E-1-b(1) of the NIH Guidelines (43 FR 60126) which says, "The Director's proposed decision, at his discretion, may be published in the Federal Register for 30 days of comment before final action is taken." This announcement is both a "Decision Document" explaining the background and reasons for the proposed decision and an Environmental Impact Assessment. Immediately following this announcement there appears a copy of the proposed revised NIH Guidelines. Both the Decision Document/Environmental Impact Assessment and the proposed revised Guidelines are issued for public comment for a period of 30 days. Written comments and inquiries should be addressed to the Director, National Institutes of Health, Bethesda, Md. 20014. All comments received will be available for public inspection at the Director's office on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. The structure of this Decision Document/Environmental Impact Assessment is as follows:

I. *History of the NIH Guidelines Through 1978.*

II. *Revision of the December 1978 Guidelines.*

III. *The "E. coli K-12/P1 Recommendation" Made by the RAC at the September 6-7, 1979, Meeting.*

IV. *Other Recommendations Made on "Major Actions" by the RAC at the September 6-7, 1979, Meeting.*

I. History of the NIH Guidelines Through 1978

The history leading to the issuance of original 1976 NIH Guidelines for Recombinant DNA Research is described in detail in the Environmental Impact Statement on the 1976 Guidelines, and in the "Decision Document" accompanying the

Guidelines in the Federal Register of July 7, 1976. Key points in the history included:

- The Maxine Singer-Dieter Soll letter (*Science 181*, 1114, 1973) arising from the Gordon Research Conference on Nucleic Acids of July 1973.
- The Paul Berg et al. letter to *Science* (*185*, 303, 1974) calling for the NIH to establish an advisory committee to write guidelines.
- The Asilomar conference of February 1975.
- The work of the NIH Recombinant DNA Advisory Committee (RAC) through 1975, resulting in the proposed guidelines of December 1975.
- The special meeting of the Advisory Committee to the Director, NIH, on February 9–10, 1976, to review the proposed guidelines.
- Final issuance of the NIH Guidelines on June 23, 1976 (published in the Federal Register on July 7, 1976).

The history from the period July 1976 to December 1978 includes the following key points:

- Deliberations on revisions by the RAC during 1977, resulting in proposed revisions published for comment in the Federal Register on September 27, 1977 (42 FR 49596).
- A public hearing on the revisions, at the meeting of the Advisory Committee to the Director, NIH, December 15–16, 1977.
- Publication for public comment in the Federal Register on July 28, 1978 (43 FR 33042) of new proposed revised guidelines accompanied by a detailed Decision Document and a detailed Environmental Impact Assessment.
- A public hearing on the proposed revisions, chaired by the General Counsel of HEW, on September 15, 1978.
- Publication of revised guidelines on December 22, 1978 (43 FR 60080), accompanied by a detailed Decision Document and Environmental Impact Assessment.

The entire history is extentively documented in Volumes 1–4 of "Recombinant DNA Research"—a series constituting a readily available public record of activities in regard to the NIH Guidelines.

II. Revision of the December 1978 Guidelines

The December 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules (43 FR 60108) include procedures for changing the Guidelines. As detailed in Section IV–E–1–b–(1) of the Guidelines, this involves consideration of the proposed changes by the NIH Recombinant DNA Advisory Committee (RAC) with an opportunity for public and Federal agency comment and with publication in the Federal Register of the final decision by the Director, NIH.

On April 11, 1979, there appeared in the Federal Register (44 FR 21730) the first changes in the Guidelines under these new procedures. There, I published background information on recommendations made by the RAC at their Feburary 16–17, 1979, meeting, and promulgated certain changes in the Guidelines.

In the Federal Register on July 20, 1979 (44 FR 42914), I published background information on recommendations made by the RAC at their May 21–23, 1979, meeting, and promulgated certain additional changes in the Guidelines.

At the most recent RAC meeting on September 6–7, 1979, additional changes in the Guidelines were recommended. Parts III and IV of this announcement give background information on these recommendations and my proposed decision on them. Immediately following this announcement, there appear proposed revised NIH Guidelines for Research Involving Recombinant DNA Molecules (which I will refer to as the November 1979 proposed Guidelines). These were obtained by incorporating into the December 1978 Guidelines all the changes made following the February 16–17, May 21–23, and September 6–7 RAC meetings.

III. The "E coli K–12/P1 Recommendation" Made by the RAC at the September 6–7, 1979, Meeting

The organization of Part III of this announcement is as follows:

In Section III–A, the historical background of the "*E. coli* K–12/P1 Recommendation" is given. In summary, this was a recommendation that experiments involving propagation of recombinant DNA in EK1 hosts should be exempted from the Guidelines, but be carried out at the P1 level of physical containment, and be registered with the Institutional Biosafety Committee (IBC) without the requirement for IBC prior review.

Section III–B specifies a framework for analyzing how a hazardous situation might result from these changes in the Guidelines, and then shows the low probability of each of a series of steps required for a harmful effect—including escape of *E. coli* K–12 in significant numbers from a P1 laboratory, implantation and persistence of *E. coli* K–12 in the human intestinal tract, conversion of *E. coli* K–12 into an epidemic pathogen, and transmission of recombinant DNA to other organisms.

Section III–C gives my responses to issues raised in correspondence concerning the recommendation.

Section III–D discusses alternatives which I considered prior to my proposed decision.

Section III–E gives my proposed decision. In summary, these experiments are not to be exempted from the Guidelines. I proposed to accept the recommended containment level of P1 and EK1, and the requirement that these experiments be registered with and reviewed by the IBC. Prior review by the IBC would not be required before initiation of most experiments in this class. Prior review and approval by the IBC would be required, however, for experiments in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express a gene coding for a eukaryotic protein. Registration of these experiments with NIH, and review of them by NIH, would not be required.

III–A. Background

Of all the recommendations arising from the last three meetings of the RAC, the one that has generated the greatest number of letters and the most discussion at the RAC meetings is a proposal adopted by the RAC on September 6, 1979, by a vote of 10 in favor, 4 opposed, and 1 abstention, that:

> Those recombinant DNA molecules that are propagated in *E. coli* K–12 hosts not containing conjugation-proficient plasmids or generalized transducing phages, when lambda or lambdoid bacteriophages or non-conjugative plasmids are used as vectors, are exempted from the Guidelines, subject to the prohibitions of I–D–1 through I–D–6. Prior to initiation of the experiments, investigators wishing to carry out such experiments must submit a registration document that contains (a) a description of the source(s) of DNA, (b) nature of the inserted DNA sequences and (c) the hosts and vectors to be used. This registration document must be dated and signed by the investigator and filed only with the local IBC with no requirement for review by the IBC prior to initiation of experiments in these categories.

(In referring to this recommendation during my analysis below, I will call it the "*E. coli* K–12/P1 Recommendation.")

At my request, the NIH Office of Recombinant DNA Activities (ORDA) has prepared a 312-page book entitled "Background Documents on *E. coli* K–12/P1 Recommendation." This contains a history of the RAC consideration of this proposal at both its May 1979 and September 1979 meetings, and includes copies of all correspondence received and documents reviewed by the RAC at these meetings. This document: (i) is now available for public inspection at ORDA; (ii) can be made available (in whole or in part) to any requester upon payment of reproduction costs; and (iii) will be published (and subsequently may be purchased through the U.S.

Government Printing Office) as part of Volume 5 of "Recombinant DNA Research," a series constituting a public record of activities in regard to the NIH Guidelines.

I have carefully examined this extensive record in detail. A summary of the record is as follows:

1. A proposed exemption was published for public comment in the Federal Register on April 13, 1979, as follows:

> Those recombinant DNA molecules that are propagated in *E. coli* K–12 hosts not containing conjugation-proficient plasmids or generalized transducing phages, when lambda or lambdoid bacteriophages or non-conjugative plasmids are used as vectors, are exempt from the Guidelines.

2. Dr. Wallace Rowe, a member of the RAC and one of the two proposers of the exemption, sent to the RAC members on May 4 a document supporting the exemption, including copies of a number of published scientific papers and letters from immunologists concerning their assessment of the possibility of autoimmune disease being caused in man as a result of recombinant DNA experimentation.

3. Also sent to the RAC members prior to their May 21–23 meeting were other docuemnts commenting on risk-assessment in general and the Rowe-Martin polyoma experiments in particular, as well as four letters commenting directly on the proposed exemption: two supporting the proposal and two considering it premature.

4. At the May 21–23 meeting, the RAC discussed the proposed exemption for several hours. A motion was passed by a vote of 17 to 0, with 3 abstentions:

> That the chair appoint a working group to: (a) conduct a rigorous scientific analysis of the *E. coli* K–12 host-vector systems with specific regard to the state of evidence of attendant biohazards of such studies/systems; (b) explore existing nonRAC (medical microbiology) mechanisms for regulating these specific host-vector systems; (c) develop proposals for "new" devices for ensuring laboratory safety standards with such systems; and (d) report the results of this working group to the full RAC for its consideration.

Later in the meeting, Dr. David Baltimore recommended that recombinant DNA experiments involving *E. Coli* K–12 host-vector systems be permitted under P1 conditions, rather than be totally exempt from the Guidelines. He said that his proposal would involve registration with the local IBC with the forwarding of a registration document to ORDA. The RAC voted 18 to 3, with 1 abstention, in favor of recommending Dr. Baltimore's proposal for consideration by the Working Group.

Later in the meeting, Dr. Jane Setlow, the RAC chairman, appointed Drs. Luther Williams (chairman), Susan Gottesman, Richard Novick, and Samuel Proctor to this "P1/EK1" Working Group.

5. The P1/EK1 Working Group deliberated and submitted the following proposal which was published for comment in the Federal Register on July 31, 1979:

> Those recombinant DNA molecules that are propagated in *E. coli* K–12 hosts not containing conjugation-proficient plasmids or generalized transducing phages, when lambda or lambdoid bacterio-phages or non-conjugative plasmids are used as vectors, can be handled at P1 and are exempted from the Guidelines.

6. Between the May and September RAC meetings, 14 letters commenting on the proposal were received and transmitted to the RAC members. All the commentators expressed strong support for the proposed exemption. Most of them supported the original proposal for complete exemption as published in the Federal Register on April 13, 1979. One of these letters was signed by 183 scientists who attended the 1979 Gordon Research Conferences on Nucleic Acids and on Biological Regulatory Mechanisms.

7. In addition to letters commenting directly on the Federal Register proposal, other relevant documents sent to the RAC prior to the September 6–7 meeting included an additional letter on the Rowe-Martin polyoma experiment, a background document from the P1/EK1 Working Group, and a manuscript on a framework for assessing the potential risks of recombinant DNA experiments prepared by Dr. Sidney Brenner for the United Kingdom Genetic Manipulation Advisory Group.

8. Distributed at the September 6–7 meeting were a summary of the major recommendations of an *ad hoc* National Institute of Allergy and Infectious Diseases working group on risk-assessment and a more detailed background document on *E. coli* K–12, prepared by the P1/EK1 Working Group.

9. At the September 6–7 meeting, several hours were spent discussing this proposal (I have reviewed a transcript of this portion of the meeting). Among the items covered during the discussion were: the interpretation of the Rowe-Martin polyoma experiments; the interpretation of two papers which appeared in the July 1979 edition of the *recombinant DNA Technical Bulletin*, "Testing of Host-Vector Systems in Mice" by Rolf Freter et al., and "Survival of *E. coli* Host-Vector systems in the Human Intestinal Tract" by Stuart Levy and Bonnie Marshall; and the status of the NIH Risk Assessment Program. Questions discussed included: How likely is the escape of *E. coli* K–12 from the laboratory? What is the likelihood of its persistence? (survival without selective advantage?) What is the possibility of a reversion of its disabling properties?—or transfer of its DNA to a wild type strain? How likely and how dangerous would the colonization of humans by *E. coli* bacteria making a "foreign" protein be?—considering the danger either due directly to action of the "foreign" protein or due to induced autoimmunity? How much should the RAC consider imaginary hypothetical hazards and how much should it concentrate on perceived real hazards? How should one extrapolate from current data to set reasonable containment levels for experiments?

Concluding this discussion, the RAC voted 10 to 4, with 1 abstention, for the "*E. coli* K–12–P1 Recommendation."

Section III–B of this document analyzes in detail the issues discussed by the RAC prior to their voting on the "*E. coli* K–12/P1 Recommendation."

III–B. *Analysis:*

This section begins with a framework for analyzing how a hazardous situation might result from the recommended changes in the Guidelines, and then shows the low probability of each of a series of steps required for a harmful effect.

Framework for Analysis

As a framework for analyzing how recombinant DNA experimentation might lead to a hazardous situation, the following appeared in the NIH Environmental Impact Statement on the 1976 Guidelines, and remains valid today:

> The hypothetical mechanisms by which insertion of foreign genes into cells or viruses might result in the formation of hazardous agents are . . . in principle, applicable to persons, animals, and plants. There is, as stated before, no know instance in which a hazardous agent has been created by recombinant DNA technology. Current knowledge permits no more than speculation that such agents may be produced and an equally speculative assessment of the nature and extent of hazards associated with a particular recombinant DNA experiment. . . .
>
> In order that any potential hazard be realized, it is necessary that each of a number of sequential events occur. Each event in the sequence is possible only if the earlier events have occurred. The organism must—
>
> (a) Contain foreign genes,
>
> (b) Escape from the experimental situation,
>
> (c) Survive after escape,

(d) Become established in an environment permitting its growth and multiplication.

(e) Contact other living organisms in a significant manner, including contact by a sufficient number of organisms to ensure survival and growth and to cause infection. Note that the environment in (d) may be a living organism itself.

In those cases where the detrimental effect would result from the formation of a harmful protein, the organism containing the recombinant DNA would have to—

(f) Contain a gene for a potentially harmful protein,

(g) Be able to express the foreign gene (that is, synthesize the corresponding protein) and

(h) Synthesize the protein in sufficient quantity to be deleterious to the infected organism.

The overall probability of a detrimental effect resulting from the formation of a harmful protein is then equal to the product obtained by multiplying together the probability of each event, (a) through (h).

In those cases where the foreign DNA itself might be the cause of undesirable effects, another set of events must be considered. Where the foreign DNA is presumed to increase the pathogenicity of the initial host cell or virus, the inserted DNA must—

(i) Impart a selective advantage for growth to the carrier of the recombinant DNA as compared with the original cell or virus,

(j) Alter the metabolism of the carrier so that it becomes disease-producing.

The overall probability of a detrimental effect by this mechanism is then equal to the product obtained by multiplying together the possibilities of events (a) through (e) times (i) through (j).

In the case where the foreign DNA is presumed to cause undesirable effects by virtue of its transfer out of the original recipient and reinsertion into cells of another species, the DNA must—

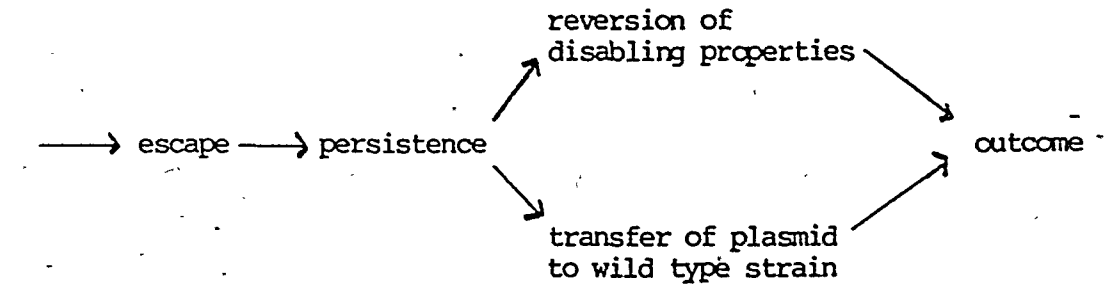
(k) Leave the original recipient without being destroyed,

(l) Survive transfer to another cell,

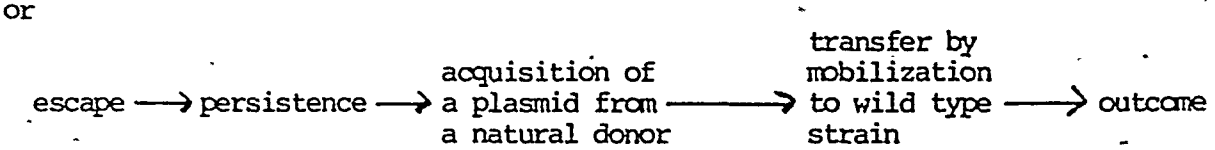
(m) Become associated with the other cell in a stable manner, either as an independent element or by natural recombination.

The overall probability of an undesirable effect arising by means of the secondary transfer mechanism is equal to the product obtained by multiplying together the probabilities of events (a) through (e) and (k) through (m).

A more recent framework for assessing the risks of recombinant DNA experiments was prepared by Dr. Sidney Brenner for the United Kingdom Genetic Manipulation Advisory Group. This document, which is part of the "Background Documents on *E. coli* K–12/P1 Recommendation" available from ORDA, was discussed by the RAC at their September, 1979, meeting. The Brenner document uses "generation trees." He gives examples such as:



or



As Dr. Brenner points out in a letter of July 26, "It is important to recognize that if any of the factors which are used can be assigned zero, then everything must be zero for that particular event. Thus if something does not express, that is enough; if it expresses and if the product has no biological target, that too is enough; and if it expresses and has a biological target and cannot gain access to it, that also is of no consequence."

Both frameworks (i.e., that of the EIS or of Brenner) lead to the conclusion that if any of the multiple steps leading to the final outcome has a zero probability, then the probability of the final outcome is zero. If no step has zero probability but if each sequential step leading to the final outcome has a low probability, then the final outcome has an exceedingly low probability.

What is the Likelihood of E. coli K–12 Escape From A P1 Laboratory?

For an organism containing recombinant DNA to cause a public health hazard, it must first escape from the laboratory.

The NIH Guidelines specify in Section II–A that:

> The first principle of containment is a strict adherence to good microbiological practices. Consequently, all personnel directly or indirectly involved in experiments on recombinant DNAs must receive adequate instruction. This shall as a minimum include instructions in aseptic techniques and in the biology of the organisms used in the experiments, so that the potential biohazards can be understood and appreciated.

The definition of P1 physical containment in addition requires the following:

> "II–B–1–a–(1). Laboratory doors shall be kept closed while experiments are in progress.
>
> II–B–1–a–(2). Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.
>
> II–B–1–a–(3). All biological wastes shall be decontaminated before disposal. Other contaminated materials, such as glassware, animal cages, and laboratory equipment, shall be decontaminated before washing, reuse, or disposal.
>
> II–B–1–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.
>
> II–B–1–a–(5). Eating, drinking, smoking, and storage of foods are not permitted in the laboratory area in which recombinant DNA materials are handled.
>
> II–B–1–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.
>
> II–B–1–a–(7). Care shall be taken in the conduct of all procedures to minimize the creation of aerosols.
>
> II–B–1–a–(8). Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.
>
> II–B–1–a–(9). An insect and rodent control program shall be instituted.
>
> II–B–1–a–(10). The use of laboratory gowns, coats, or uniforms is discretionary with the laboratory supervisor.
>
> II–B–1–a–(11). Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

II-B-1-a-(12). The laboratory shall be kept neat and clean.

Two requirements of P1 are most important. First, all biological wastes are to be decontaminated. *E. coli* are very sensitive to chemical disinfection. (*Disinfection, Sterilization and Preservation*, Seymour S. Black, editor, second edition, Lea and Febiger, 1977.) Second, mouth pipetting is prohibited. In the 1976 NIH Guidelines, mouth-pipetting was permitted at the P1 level. Mouth-pipetting was prohibited at the P1 level in the Guildelines promulgated in December 1978. The "Decision Document" accompanying proposed revised guidelines in the Federal Register on July 28, 1978, said:

A number of commentators have urged that mouth pipetting be prohibited at the P1 level of physical containment. This is strongly endorsed by NIH safety experts, who point out that this is an important safety feature, and that efficient new mechanical pipetting aids should not greatly hamper researchers. Also, the EMBO Standing Advisory Committee on Recombinant DNA Research "believes that mouth pipetting should be prohibited in P2–P4 laboratories." In addition, the Working Group of American virologists which met on April 6–7, 1978, to review the report of the U.S.-EMBO Workshop To Assess Risks for Recombinant Experiments Involving the Genomes of Animal, Plant, and Insect Viruses wrote the following in their report: "In its deliberations, the Working Group was impressed with the safeguards afforded by a ban on mouth pipetting for recombinant DA experiments involving *E. coli* K–12 host-vectors. The group felt that the only plausible way *E. coli* K–12 could gain entry into laboratory workers was by oral ingestion. The analysis contained in the U.S.-EMBO Report was predicated on the remote possibility that *E. coli* K–12, containing eukaryotic viral DNA, would be swallowed and the viral DNA insert would be delivered to a tissue in the body which ordinarily would be inaccessible to the virus. A prohibition of mouth pipetting would clearly prevent this sequence of events from even beginning. The Working Group therefore, recommended that no mouth pipetting be allowed at any level of physical containment (including P1) when working with *E. coli* K–12."

The Environmental Impact Assessment accompanying proposed revised guidelines in the Federal Register on July 28, 1978, said:

A major change * * * is the banning of mouth pipetting at the P1 level, meaning that mouth pipetting is now banned for all experiments covered by the guidelines. Since the only plausible way *E. coli* K–12 could gain entry into laboratory workers is by oral ingestion, this ban greatly reduces the possibility that any organisms containing recombinant DNA will escape and thus minimizes the risk of environmental impact.

P1-type laboratories are used around the world for diagnostic microbiological purposes, which involve handling many common pathogens. There is no evidence that the public has ever been endangered by the diagnostic and research efforts of the many private, city, county, and State microbiological laboratories associated with hospitals and public health departments. While accidental infections in laboratory workers have occurred, no epidemic or hazard to the public health has ever been shown to have arisen from work conducted in accordance with the basic safe practices required in a P1-type laboratory.

The main additional safety features of P2 and P3 as compared with P1 are the use of a biological safety cabinet, controlled air flow, and access control. These features are of primary importance in dealing with organisms transmitted by the respiratory route. For enteric organisms, such as *E. coli*, the main route of transmission is oral. Thus the ban on mouth pipetting, the requirement for decontamination, and observance of basic personal hygiene and sanitation practice, as required at the P1 physical containment level, are the essential safety features. The additional features of P2 and P3 provide additional safeguards against inhalation exposure, which is not a route of infection for *E. coli*.

What is The Probability of E. coli Causing An Epidemic By Person-to-Person Spread?

There are *E. coli* strains (other than *E. coli* K–12) which can cause disease in man. However, even for these, epidemic spread by person-to-person contact is extremely unlikely in adults. As summarized by Dr. Sherwood Gorbach (*Journal of Infectious Diseases 137*, 615, 1978):

The organisms are transmitted by the fecal-oral route. Person-to-person spread is rather unlikely, and for this reason secondary transmission of *E. coli* from the index case to another person is rarely observed. These epidemiologic characteristics are based on the requirement for a large oral inoculum of *E. coli* to initiate disease, an inoculum estimated to be at least 10^6–10^{10} organisms. Under natural circumstances, only highly contaminated sources such as food and water can serve as vehicles of transmission.

As discussed in an April 12, 1977, letter from Dr. Roy Curtiss (reprinted in the Environmental Impact Statement on the 1976 Guidelines):

In terms of communicability of *E. coli* K–12, we know that enteric diseases caused by enteropathogenic *E. coli* and various strains of Shigella, Salmonella and Vibrio are transmitted by contaminated food and water and that manifestation of disease symptoms requires consumption of approximately one million bacteria. Such enteric diseases are seldom spread by aerosols . . . In terms of the more usual means for spread of enteric pathogens, it is evident that enteric diseases are very well controlled in the United States by sanitary engineering.

Certain strains of *E. coli*, such as those which produce enterotoxins, are responsible for a portion of acute diarrheal diseases of childhood and have been related to hospital nursery outbreaks of diarrheal disease. Data collected thus far suggest that *E. coli* diarrheal disease is relatively uncommon in the United States, but is more common in the developing world.

Dr. Eugene Gangarosa, writing in the *Journal of Infectious Diseases 137*, 634, 1978, concluded as follows:

Current evidence suggests that diarrheagenic *E. coli* are not important causes of disease in the sanitized urban centers of the United States at this time. However, enterotoxigenic *E. coli* are a leading cause of diarrhea among travelers who visit developing countries. The failure of diarrheagenic *E. coli* pathogens to gain a foothold in this country, despite problems with enteropathogenic *E. coli* in nurseries during the 1940's and 1950's and the more recent multiple introductions of enterotoxigenic *E. coli* by travelers returning from developing areas of the world, demonstrates the epidemiologic impotence of diarrheagenic *E. coli* in the relatively sanitized environment of the United States. Nondiarrheagenic *E. coli* seem to be major pathogens in community-acquired and nosocomial infections in extraintestinal sites.

In my judgment, the potential for an epidemic caused by the genetically manipulated K–12 strain of *E. coli* does not seem remotely possible. Even if disease could occur, it seems most unlikely that transmission from the laboratory to the community would take place, because of the reasons cited previously.

Is E. coli K–12 Pathogenic?

The "E. coli K–12/P1 Recommendation" mandates the use of *E. coli* K–12 hosts. Although there are pathogenic strains of *E. coli*, the enfeebled laboratory strain *E. coli* K–12 is not pathogenic. As noted in the Environmental Impact Assessment published in the Federal Register on July 28, 1978:

The laboratory variants of K–12 permitted in recombinant DNA experiments have never been reported cause disease, even in laboratory workers. K–12 has been grown in large quantities up to hundreds of liters containing as many as a trillion bacteria. These cultures have been produced in countless laboratories the world over, and under containment conditions lower than the minimal ones in the NIH guidelines.

As summarized by Dr. Sherwood Gorbach (*Journal of Infectious Diseases 137*, 615, 1978):

A critical constellation of virulence factors required by a microorganism in order to produce disease: (1) survival in the environment so that it can spread from animal to animal, (2) some mechanism for penetrating the skin or a mucosal surface such as the bowel, genitourinary tract, or oropharynx, (3) multiplication within the host, (4) systemic spread within the host, (5) resistance to host defense mechanisms, and (6) production of toxin or some other mechanism to damage the host to cause those symptoms associated with 'disease.' Freter has emphasized that the absence of any one of these characteristics will break the chain of events, rendering the microorganism avirulent . . . . *E. coli* K–12 is intrinsically impaired in most, if not all, of these properties.

Can E. coli K–12 Be Made Pathogenic By The Insertion Of Recombinant DNA?

As discussed in the Environmental Impact Assessment which appeared in the Federal Register on July 28, 1978:

Seeking a consensus on the matter of risk assessment in recombinant DNA research, with particular reference to the use of *E. coli*, the National Institutes of Health sponsored a workshop in Falmouth, Mass., on June 20–21, 1977. In attendance were approximately 50 invited participants and observers, from the United States and abroad, including experts on all aspects of infectious disease. The following excerpt from a letter by the workshop chairman, Sherwood L. Gorbach, to Donald S. Fredrickson summarizes the principal conclusion: . . . "The participants arrived at unanimous agreement that *E. coli* K–12 cannot be converted into an epidemic pathogen by laboratory manipulations with DNA inserts. On the basis of extensive studies already completed, it appears that *E. coli* K–12 does not implant in the intestinal tract of man. There is no evidence that non-transmissible plasmids can be spread from *E. coli* K–12 to other host bacteria within the gut. Finally, extensive studies in the laboratory to induce virulence in *E. coli* K–12 by insertion of known plasmids and chromosomal segments coding for virulence factors, using standard bacterial genetic techniques, have proven unsuccessful in producing a fully pathogenic strain. As a result of these discussions, it was believed that the proposed hazards concerning *E. coli* K–12 as an epidemic pathogen have been overstated. Such concerns are not compatible with the extensive scientific evidence that has already been accumulated, all of which provides assurance that *E. coli* K–12 is inherently enfeebled and not capable of pathogenic transformation by DNA insertions."

Does The Introduction of Eukaryotic Shotgun DNA Into E. coli Alter Its Pathogenicity?

Numerous "shotgun" experiments have been performed, inserting pieces of eukaryotic DNA into *E. coli* K–12. In very few instances have the resulting recombinant-DNA-bearing bacteria been specifically tested for pathogenicity. A paper sent to the RAC, and contained in "Background Documents on *E. coli* K–12/P1 Recommendation," reports on such a study by Drs. Hardy Chan, David Botstein, Wallace Rowe, and Malcolm Martin.

Shotgun DNA from *Saccharomyces cerevisiae* ligated into the plasmid pMB9 was inserted into *E. coli* K–12. Weanling mice were injected intracerebrally and intraperitoneally with the recombinant-DNA-containing *E. coli* K–12. Mice were sacrificed, the brains cultured in broth, and the broth culture injected into another group of mice, for five serial passages. The results showed that "Shotgun cloning of the majority of the genome of *Saccharomyces* into *E. coli* 12–K did not yield any clone with increased virulence for mice or with increased ability to adapt to mouse virulence as compared with K–12 carrying a non-recombinant plasmid."

Does E. coli K–12 Implant in the Intestinal Tract of Laboratory Animals?

As summarized by Dr. Sherwood Gorbach (*Journal of Infectious Disease 137*, 615, 1978):

A number of investigators have tried in vain to implant *E. coli* K–12 in the intestinal tract of laboratory animals. Negative results have been noted in mice, rats, chickens, pigs, and calves. *E. coli* K–12 has been able to colonize the stomach of starved sheep.

Dr. Rolf Freter (*Journal of Infectious Diseases 137*, 624, 1978) reported that chi-1666 (an *E. coli* K–12 strain) "persisted beyond seven days in only one of a total of 144 conventional mice fed this bacterium." However, when the *E. coli* K–12 were first implanted in "germ-free" mice which were "conventionalized" later, "the strains established themselves in the indigenous flora for the length of the experiments (up to 85 days) at population levels normally assumed by *E. coli* in the conventional mouse."

Does E. coli K–12 Implant in the Human Intestine?

As noted in the Environmental Impact Statement on the 1976 Guidelines:

Experiments have shown that even after normal humans have ingested up to 10,000,000,000 K–12 cells, only transient multiplications of the bacteria in the intestines can be observed, and that after a time no K–12 can be detected in the feces. Thus, K–12 does not establish itself as a permanent resident of normal human beings.

It might be pointed out that animals, including humans, ingest large numbers of bacteria of many species daily. Most of these do not take up long-term residency. For example, a normal portion of yogurt may contain ten billion cells of the bacteria *Lactobacillus vulgaris;* in spite of daily consumption, the *Lactobacillus* quickly disappears from the human bowel.

As summarized by Dr. Sherwood Gorbach (*Journal of Infectious Disease 137*, 615, 1978):

Since colonization of the intestine is felt to be an initial event in many pathologic states involving *E. coli*, it is natural that this feature has been the subject of several investigations. It is fair to state that there have been no instances in which the ingested strain of *E. coli* K–12 has been implanted in the human intestine. Smith fed eight different *E. coli* K–12 strains, containing various transmissible plasmids, to a volunteer at high doses (10^9). Some strains could not be isolated at all from the feces, while others persisted in progressively reduced counts for a period of up to four days. The experiment was subsequently repeated, and there was again no persistance beyond four days. To increase the likelihood of implanting *E. coli* K–12 in the gut, Smith then used a K–12 strain that had inserted in it the colicin V (ColV) plasmid of a wild-type *E. coli* (ColV promotes the survival of wild-type *E. coli* in the intestinal tract.) When a volunteer consumed the K–12 strains with and without the ColV plasmid, the strains were eliminated from the feces in an equal time frame, none persisting more than four days.

Anderson attempted similar implantations with *E. coli* K–12 strains in eight volunteers who received doses of up to 10^{10} organisms. The maximal period of fecal excretion of the test strains was six days, with a mean of three days. These studies were repeated, again using eight volunteers, and the same findings were observed. Gorbach reported at this meeting unsuccessful attempts at implanting *E. coli* K–12 in two patients with defective bacterial clearing mechanisms in the small bowel. In one case, the patient has a stricture in the ileum, and the other patient had severe diarrhea due to cholera. The K–12 strain was eliminated from the small bowel and faeces within 24 hours in both patients.

Does E. coli K–12 Infect Laboratory Personnel?

A study of non-recombinant DNA workers in a laboratory studying *E. coli* K–12 and transmission-proficient R-plasmids (V. Petrocheilou and M. H. Richmond, *Gene* 2, 323, 1977) concluded that:

Faeces of laboratory workers who handled nalidixic acid-resistant *Escherichia coli* K–12 and R plasmids with multiple drug resistance markers were monitored every 2 or 3 days for over a 2-year period. Neither the K–12 bacteria nor any of these plasmids were ever found in the faeces. Since these R-plasmids are transmission-proficient and the work was carried out without any special precautions, one may conclude that there is not likely to be any practical risk for transmission of recombinant DNA when cloned in currently used transmission-deficient plasmids of *E. coli* K–12. . . . It is important to realize that studies carried out in this way give an overall view of the probability that a laboratory

strain will either itself become established in the gut or lead to the persistence of an R-plasmid in another *E. coli* line following plasmid transfer.

As such, it is therefore a composite measure of two separate processes: the probability of infection by the organisms under the conditions in which the laboratory work is carried out; and the ability of the organism, or its plasmid, to survive as a component of the faecal flora of the worker concerned. Although it could be argued that such a study is difficult to interpret because of its complexity, nevertheless the overall probability with which the process occurs is important in assessing the hazards of laboratory work with *E. coli* strains carrying R-plasmids. The results reported here suggest that *E. coli* K–12 lines, whether or not R-plasmids are carried, are unlikely to establish themselves as major components of the bacterial faecal flora of the workers handling the plasmids; and such a view is certainly consistent with the behaviour of *E. coli* K–12 strains carrying R-plasmids when deliberate attempts are made to establish them in the human gut by feeding them to volunteers (Anderson, 1975; Williams-Smith, 1975).

In the context of genetic manipulation experiments, these results suggest that some measure of safety attaches to the use of *E. coli* K–12 strains even in comparison to what might be expected for more commonly encountered smooth strains of *E. coli*. The margin of safety is increased very substantially when disabled versions of *E. coli* K–12, and/or plasmids that are not self-transmissible are used for in vitro recombination experiments.

An update of these data, sent to the RAC and contained in "Background Documents on *E. coli* K–12/P1 Recommendation," is the report "Summary of Conclusions from Feeding and Monitoring Experiments" by M. Richmond, as presented to the Risk-Assessment Subcommittee of COGENE on March 30, 1979. He notes, "Over a period of 26 months in Bristol, 12 months in London and 12 months in Seattle involving 64 subjects, there was no evidence that laboratory workers, or members of their families, acquired either bacterial strains or plasmids that were employed in the laboratory. This was true even in a few individuals working in the laboratory who received short courses of antibiotic therapy or, in one case, an individual who was on prophylactic antibiotic therapy."

Will E. coli K–12 Carrying Recombinant DNA Survive?

The Environmental Impact Assessment of July 28, 1978, said:

There are various indications that both host bacteria and plasmid or virus vectors containing inserted foreign DNA are less likely to survive and multiply than are the original organisms, except for the very unusual instances where the foreign DNA supplies some function, such as antibiotic resistance, that favors the organism in a particular, non-natural environment. Natural selection results in the survival of only well-balanced and efficient organisms; unneeded genetic material tends to be lost. Essential functions are carefully controlled and are switched on and off as needed.

The activity of a particular gene product depends upon, and in turn influences, many other functions of a cell. Such uncontrolled, nonessential properties as might be introduced by foreign genes would probably not result in any advantage to the survival and multiplication of an otherwise well-balanced organism. Rather, the new properties might be expected to confer some relative disability. It is unlikely that elimination of a gene product by insertion of a foreign DNA sequence would be advantageous. More likely than not, any new properties derived from insertion of foreign DNA would confer some relative disability on the recipient organism. Therefore, it is probable that bacterial cells, plasmids, or viruses containing inserted foreign DNA would multiply more slowly in nature than the same cells or vectors without foreign DNA; and in a natural competitive environment, those organisms containing recombinant DNA would generally be expected to disappear.

New data relevant to this issue, sent to the RAC and contained in the "Background Documents on *E. coli* K–12/P1 Recommendation," were supplied by Dr. Donald Brown of the Carnegie Institution of Washington. *E. coli* K–12 containing no recombinant DNA were mixed with *E. coli* K–12 containing a number of different inserts (DNA from *Xenopus laevis, Drosophila melanogaster,* or *Bombyx mori*). In each case the *E. coli* K–12 containing no recombinant DNA outgrew the *E. coli* K–12 containing recombinant DNA.

Recent data sent to the RAC and contained in the "Background Documents on *E. coli* K–12/P1 Recommendation" supplied by Dr. Paul Burnett of Lilly Research Laboratories on May 8, 1979, indicated that when *E. coli* K–12 carrying recombinant plasmids containing insulin gene sequences were fed to conventional rats or mice, "the strain and plasmid are lost very rapidly."

Will Recombinant DNA Be Transmitted from E. coli K–12 to Other Organisms?

As described in the Environmental Impact Assessment (Federal Register July 28, 1978):

While it would appear impossible to render *E. coli* K–12 pathogenic by the introduction of foreign DNA, there is still to be considered whether the inserted fragment could be transmitted to another bacterium with which the K–12 comes in contact, including other strains of *E. coli*. Such a transmission might convert the recipient into a pathogen or render a pathogen more viable. The case of plasmid vectors is considered first.

Plasmids are intracellular particles composed of DNA and not dependent on chromosomes for their replication. Hence, they can be used as vectors, or vehicles for transporting foreign DNA into the bacterial host, where they multiply and propagate the genes they bear. Certain plasmids (called "conjugative") are inherently able to migrate from one bacterial cell to another. These are prohibited for nearly all recombinant DNA experiments. Only plasmids not capable or barely capable of spontaneous intercellular migration ("nonconjugative") may be used.

As summarized by Dr. Sherwood Gorbach (*Journal of Infectious Diseases 137,* 615, 1978):

Smith (1978) fed 10^9 *E. coli* K–12 organisms to a normal volunteer. He used several strains which contained self-transmissible plasmids of the F, I, or A2 transfer groups. These strains could transfer in vitro the tetracycline resistance plasmids to an *E. coli* K–12 recipient and to resident *E. coli* from the normal flora of the volunteer. When the strains were fed to the volunteer, however, they were eliminated from the feces within four days, and there was no evidence of in vivo plasmid transfer to resident strains or to susceptible K–12 and H123 *E. coli* strains fed in the same ingested sample. This experiment was repeated, and again there was failure to transfer in vivo the tetracycline resistance plasmid.

Anderson (1978) fed large number of *E. coli* K–12 organisms which contained a nonconjugative plasmid to eight volunteers. In no instance was plasmid transfer to normal flora demonstrated in vivo. However, in vitro studies showed that *E. coli* strains from the normal flora of three of eight subjects carried transfer plasmids which could mobilize one of the nontransmissible plasmids, but not the other. Anderson suggested that "transfer would therefore be possible if a suitable conjugative plasmid entered a strain carrying a nonautotransferring hybrid plasmid."

Curtiss (1978) described in vitro transfer experiments in which he measured the mobilization of a series of recently developed, nonconjugative plasmids under optimal laboratory conditions. He estimated that the maximal probability for transmission of such plasmid vectors from an *E. coli* K–12 host is 10^{-16} per surviving bacteria per day in the intestinal tract of warm-blooded animals. He emphasized that the chance of transfer is even less since other factors, not taken into account, would reduce transfer in the intestinal tract. The in vivo deterrents included the following factors. (1) Diminished bacterial metabolic activity leads to decreased conjugation. In the test tube, the generation time of *E. coli* is 20–40 min, but it is 4–6 hr. in the intestinal tract. (2) Conjugation is inhibited by fatty acids, bile, and other constituents of the gut. (3) Conjugation is inefficient at the pH and Eh (oxidation-reduction potential) of the intestine.

A study by Dr. Dean Hamer (*Science 196,* 220, 1977) looking at the ability of conjugative sex factors to mobilize nonconjugative plasmids with or

without inserted recombinant DNA concluded that "the insertion of foreign DNA into a plasmid had little effect on its mobilizability."

A recent study (1979) included in the "Background Documents on *E. coli* K–12/P1 Recommendation" is the paper "Survival of *E. coli* Host-Vector Systems in the Mammalian Intestinal Tract" by Drs. Stuart B. Levy, Bonnie Marshall, Andrew Onderdonk, and Debra Rowse-Eagle, which concludes, "These results demonstrated an absence of detectable transfer of pBR322 during transit in the intestinal tract of the human volunteers, despite survival of the laboratory K–12 strain of almost a week at reasonably high titers."

The Rowe-Martin polyoma experiments (copies of the published scientific papers are included in the "Background Documents on *E. coli* K–12/P1 Recommendation") provide valuable data on the question of the likelihood of an animal virus recombinant DNA insert being transferred out of an *E. coli* K–12 host cell used in its propagation into a eukaryotic cell.

What is the Probability of Recombinant DNA Experimentation Leading to Autoimmune Disease?

Included in the "Background Documents on *E. coli* K–12/P1 Recommendation" are copies of a letter sent by Dr. Wallace Rowe to leading immunologists and their replies. Appended to the Rowe letter were (1) a paper by Dr. Jonathan King *(Journal of Infectious Diseases 137,* 663, 1978) which says, "Several kinds of pathologies might result from infection by chimeric *E. coli* strains displaying foreign proteins. One model is an autoimmune condition associated with exposure to antigens cross-reacting with human antigens" and (2) a letter from Dr. Jon Beckwith which says "Several laboratories * * * have used recombinant DNA techniques to construct strains which produce hybrid proteins between the peptide hormones insulin and/or somatostatin and bacterial proteins * * * [There is] a real possibility that these modified peptide hormones could break tolerance/induce an autoimmune response in humans to their own hormones if they reached the appropriate sites in the body. This, in turn, could clearly have severe effects on the health of the affected individuals."

Dr. Rowe asked in his letter for an "objective evaluation of the evidence for or against the possibility of such disease mechanisms occuring." The responses received are included in the "Background documents on *E. coli* K–12/P1 Recommendation." The respondents were Drs. Baruj Benacerraf, Norman Talal, Frank Dixon, Philip Paterson, William Paul, and Richard Asofsky. In summary, they concluded that the probability of recombinant DNA experimentation leading to autoimmune disease was remote,—"grossly exaggerated and based upon the orrurrence of hypothetical events"—[One must distinguish] "between autorecognition (which is physiologic and necessary for proper immunologic communication), autoimmunity, and autoimmune disease."—"I see the eukaryotic proteins secreated by *E. coli* bearing foreign DNA sequences as no more likely to induce autoreactive immune responses than the negative antigenic constituents of this prokaryotic vector cell itself."—

Ad Hoc working Group on Risk Assessment

An Ad Hoc working Group on Risk Assessment convened by the National Institute of Allergy and Infectious diseases met on August 30, 1979. They discussed the NIH Plan For A Program to Assess the Risks of Recombinant DNA Research which was published in the Federal Register on September 13 [44 FR 53410]. Specific areas of concern involving *E. coli* K–12 were discussed in detail; old evidence as well as evidence accumulated in the preceding months were reviewed. The Working Group expressed their "solid support for the proposed exemption of K–12 based cloning from the Guidelines providing that P1 laboratory practices were employed." This was reported to the RAC at their September meeting, and is contained in the "Background documents on *E. coli* K–12/P1 Recommendation."

Lack of Demonstrated Hazard To Date

The Environmental Impact Assessment of July 1978 stated, "No evidence has come to light that any of the thousands of individual recombinant DNA clones constructed over the last 5 years have yielded a product harmful to man or the environment. On the other hand, many examples of useful knowledge obtained through such techniques continue to accumulate rapidly." The negative aspect of this statement remains unchanged as of this date. The useful new knowledge obtained through the use of the technology has continued to accrue.

III–C. *Letters Received Subsequent to the September 6–7 RAC Meeting:* The "*E. coli* K–12/P1 Recommendation" made by the RAC on September 6 was reported in the press. Subsequently, I received 26 letters concerning this recommendation. These letters are part of the book, "Background Documents on *E. coli* K–12/P1 recommendation," available from ORDA. The major points made in the letters, and my response to them, are as follows:

Only 10 of 25 Members of the RAC Voted in Favor of the "E. coli K–12/P1 Recommendation"

A number of commentators objected to the fact that only 15 RAC members voted on this issue, out of a total of 25 authorized members on the RAC. Since only 10 of these 15 voted in favor of the motion, they constituted less than a simple majority of authorized RAC members.

Although the RAC is authorized to have 25 members, at the September 6–7 meeting only 24 members were actually appointed. Three members missed the entire meeting. Ten attended only part of the meeting. Only eleven attended the entire meeting. Of these, one is the chairman, Dr. Setlow, who only votes in case of a tie.

HEW regulations (45 CFR 11.5) implementing the Federal Advisory Committee Act, applicable to all HEW advisory committees, state, "Unless otherwise established in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership." The charter of the RAC is silent on the matter of a quorum. The authorized RAC membership is 25; therefore, 13 RAC members constitute a quorum.

At the May 21–23, 1979, RAC meeting, a Working Group on Procedures was established. The Working Group reported at the September 6–7 RAC meeting. (A discussion of this item was originally scheduled as one of the first agenda items, but was moved to later in the meeting because the arrival of Dr. Ahmed, a member of the Working Group, was delayed.) The Working Group report had been sent to RAC members in advance of the September 6–7 meeting. It contained a number of recommendations on six issues: speaking time for members of the public; outside consultants; conflict of interest; working groups and subcommittees; presentation of agenda materials to the RAC; and quorum and voting procedures. Each of the recommendations was voted on at the September 6–7 meeting. Dr. Ahmed presented a minority view of the Working Group that "For major actions under the Guidelines, a quorum should consist of two-thirds of the committee membership (17 members)." After discussion of this proposal by the RAC, a substitute motion—that there be no change from current procedures for

major actions (i.e., that a quorum be 13)—was passed by the RAC with 10 in favor, 6 opposed, and 2 abstentions.

The RAC Was Not Adequately Prepared To Vote on This Issue

One new member of the RAC felt there may have been inadequate preparation "for taking action on this most important issue" and that "important recommendation may be made with inadequate discussion."

The large quantity of background material supplied to RAC members relevant to this and many other issues is burdensome Even with diligent preparation, a member just joining the RAC will find the subject matter to be extremely complex. In reviewing the record, however, I am impressed with the many hours the RAC spent discussing this proposal during its last two meetings, and I believe that members in attendance at both did not lack time to air their views. Moreover, the preparation of the RAC for addressing this proposal included assignment of the question to a sub-group of its members for consideration between the May and September meetings.

The RAC is a unique type of NIH committee. The usual NIH public advisory committee system is "two-tiered." At the first level, technical experts are assembled on initial review groups (study sections), where judgments are made on the quality of scientific hypotheses and the likelihood that they can be tested by experimentation. At the second level, in separate committees, typically represented by the Institute Advisory Councils, a broader array of talents (lay as well as scientific) is assembled to advise on the relevance of the proposed research to NIH programs and on other matters of broad public interest. Until December 1978, advice to NIH involving recombinant DNA research essentially followed this two-tiered model. The RAC served primarily as an initial review group providing the NIH Director with advice on technical issues in recombinant DNA research. Only two of its sixteen members were laymen. For the second level review, I used the Advisory Committee to the Director, NIH. In preparing the original 1976 NIH Guidelines for Recombinant DNA Research and in drafting the 1978 revisions, the Director's Advisory Committee members provided the broader public perspective.

This was changed in a major revision of the Guidelines in December 1978. The membership of the RAC was expanded to include more scientific disciplines and more lay members. The usual dual review was compressed into a single enlarged committee.

Procedures were also changed to assure opportunity for prior public comment on issues considered by the RAC. In this way, both the RAC and the NIH Director receive the benefit of such opinions in the deliberation of the proposals for continuing revision of the Guidelines.

These changes were made to safeguard two vital public interests in the use of these remarkable techniques. The first interest is safety. The second interest is access to the benefits of the technology. The operations of the RAC determine the proper balance of these interests.

I have admiration for the performance of the RAC. The pressures upon its members are great from all sides. They have not been stampeded, and they have not allowed the vital stream of decisions they must continuously provide to be obstructed. I have been impressed with the care that the RAC chairman, Dr. Jane Setlow, has taken to allow all points of view to be aired at the RAC meetings, and to continue discussion on each issue until all members have had opportunity to ask all the questions and make all the points they wished.

Prepare an Environmental Impact Statement

A number of commentators requested that NIH prepare an environmental impact statement on "the proposed exemption."

As discussed in Section III–E below, I am not proposing an exemption for these experiments. An environmental impact assessment is contained in this document relative to the actions I am taking.

NIH prepared an environmental impact statement on the original 1976 NIH Guidelines for Recombinant DNA Research. In the Federal Register on July 28, 1978, a proposed revision of the NIH Guidelines was published for public comment along with an environmental impact assessment. The revised Guidelines published in the Federal Register on December 22, 1978, were again accompanied by an environmental impact assessment. In that document (43 FR 60101), I explained in detail why I concluded that an environmental impact assessment rather than an environmental impact statement fully satisfied the requirements of the National Environmental Policy Act of 1969 (NEPA).

The original environmental impact statement on the 1976 Guidelines (137 pages plus extensive appendices) and the environmental impact assessments published in the Federal Register on July 28, 1978 (182 Federal Register pages) and on December 22, 1978, contain extensive discussions on recombinant DNA, physical and biological containment, *E. coli* K–12, and the NIH Guidelines. Much of what was written there is still highly relevant. These earlier environmental impact statements/assessments, together with the environmenal impact assessment contained in this document, in our judgment, fully satisfy NEPA.

Approve the "Exemption"

A number of commentators endorsed the exemption of all recombinant DNA experiments in *E. coli* K–12. (These letters were received after the September 6–7 meeting; many such letters were received earlier.) One commentator reported on results in his laboratory indicating that recombinant DNA is spontaneously lost from *E. coli* K–12 and that insertion of foreign DNA into bacteriophage lambda decreases its growth potential. He said, "Considering the loss of recombinant DNA from these micro-organisms during ideal growth conditions and considering the general lack of competition with wild type cells, I cannot conceive that *E. coli* K–12 containing recombinant DNA could find an ecological niche outside of the laboratory."

For a discussion of my proposed decision not to exempt all *E. coli* K–12 experiments, see Section III–E below.

Delay Any Change in the NIH Guidelines Pending Many More Risk-Assessment Experiments

One commentator wrote, "Any relaxation of the NIH guidelines for recombinant DNA research would appear to be quite unjustified, since the surface has barely been scratched with regard to risk-assessment studies." A second commentator wrote, "This important decision was also premature in terms of the present risk assessment studies being carried out by NIH contractors."

The original guidelines were constructed to minimize the effects if certain imaginable risks should arise from recombinant DNA experiments. A continuing reassessment of the probabilities that such risks exist is a necessity. Society expects and deserves a running balance between the benefits of using the recombinant DNA techniques and their possible harm. When certain requirements of the guidelines can no longer be justified, they should be changed. The guidelines limit and make considerably more expensive and difficult the use of recombinant DNA techniques that

would be the case without them. In the end unrealistic restriction will frustrate the general maintenance of necessary and reasonable precautions.

NIH is committed to continuing risk assessment using both special experiments and continuing synthesis of all the accumulated data. Some studies are specifically designed to answer questions about containment, survival, and behavior of "recombinant" organisms. Data are also supplied by careful analysis of the steady stream of information emerging from other recombinant DNA experiments, as well as new knowledge in the areas of microbiology, infectious disease, cell biology, and genetics. Preceding sections of this document describe old and new information and analyses bearing directly on the "*E. coli* K–12/P1 Recommendation." None of the specific risk-assessment studies now being carried out by NIH contractors is designed to yield information that will bear unequivocally on this decision. See further discussion on this point in Section III–D below.

Data Are Not Sufficient to Justify Exemption

Some commentators gave specific reasons for not exempting *E. coli* K–12 experiments from the Guidelines at this time. Some noted that there are conflicting interpretations of the significance of the Rowe-Martin polyoma risk-assessment experiments. Some cited specific additional risk-assessment experiments which they feel should first be completed. One commentator noted that much risk assessment data has been obtained using EK2 systems and said that these data should not be extrapolated to EK1 systems. In addition, he noted that certain data were used previously to justify the containment levels set in the December 1978 Guidelines and said, "One can thus ask what is the basis for the current committee's recommendation to use these same data to justify an additional lowering of containment?"

In response to the last point, I note that various new data, available first in 1979, were considered by the RAC along with "old" data. It is a continuous charge to the RAC to examine new data, but also to reexamine old data in coming to their recommendations.

In regard to the Rowe-Martin experiments, the results are published, the data available to all to analyze. A number of letters on this issue are included in the book "Background Documents on *E. coli* K–12/P1 Recommendation." At each of the last two RAC meetings, conflicting interpretations on the experiments were openly discussed. Also discussed by the RAC was extrapolation of data obtained with EK2 systems to EK1 systems, and the perceived need for certain additional risk-assessment experiments to be completed. These are questions on which people will have different opinions. Indeed, in my analysis of the RAC discussion on this issue, I find these to be the major points which seemed to lead to the split vote by the RAC. That is it appears that the four RAC members who voted against the "*E. coli* K–12/P1 Recommendation" felt that certain additional risk-assessment experiments should be done first, including some experiments previously done with EK2 systems which they would like repeated with EK1. On the other hand, the 10 RAC members who voted in favor of the proposal judged that the data in hand were sufficient to justify the proposal.

Strong Directive to IBCs

One RAC member wrote:

> I still have reservations about the exemptions and feel that if the proposal is accepted by Dr. Fredrickson, then a fairly strong directive to the IBC's is a minimum necessity * * * to the effect that they are expected to review the registration-MUA's at their earliest convenience, paying special attention to two questions: (1) is the experiment actually exempt and (2) does it involve the cloning of genes determining potentially hazardous polypeptides or other products. In the latter case, it might be suggested that a test of this possibility be performed. In the event of an irreconcilable difference of opinion involving the IBC and an investigator, ORDA should be consulted.

I agree with the recommendation for a strong directive, and have taken steps to ensure, when the final decision is made on the "*E. coli* K–12/P1 Recommendation," that not only Institutional Biosafety Committees but also institutional leaders will be informed of their special responsibilities with regard to these experiments.

Don't Exempt

A number of commentators urged that the experiments falling under the "*E. coli* K–12/P1 Recommendation" not be exempted from the Guidelines.—"I feel it is premature to exempt the vast majority of recombinant DNA experiments with *E. coli* K–12."—"I oppose the proposed exemptions of the Recombinant DNA Advisory Committee."—"The purpose of this letter is to urge against the approval of the proposed complete exemption of cloning *E. coli* K–12 hosts from the NIH recombinant DNA guidelines and to encourage a more moderate relaxation of existing constraints as an alternate action."

As I discuss in Section III–E below, my proposed decision is not to approve an exemption for these experiments; they would be retained under the control of the Guidelines, including the requirement for P1 and EK1 containment.

III–D. Alternatives

In Section III–E of this announcement I provide a full exposition of my proposed decision on the "*E. coli* K–12/P1 Recommendation." A summary of this proposed decision was provided at the beginning of Section III. Before coming to this proposed decision, I considered a number of alternative actions which are discussed below.

Make No Change In The Guidelines Until Many More Risk-Assessment Experiments Are Completed

Some argued that no changes should be made in the Guidelines until many more risk-assessment experiments are completed.

I have discussed this in Section III–C above. NIH is firmly committeed to an ongoing program of risk-assessment studies. It is responsible, however, for husbanding the resources for what are often very expensive and time-consuming studies. The experiments that are undertaken should seek to solve critical and, if possible, generic questions. We must be convinced that no significant risk to the worker or the public is inherent in the permissible work. Extraplation from specific risk-assessment experiments to generic conclusions is always limited. Results in the mouse may not hold in man, or in all men; observations with one plasmid cannot be extended to all plasmids. The almost limitless permutations of possible transplanted genetic material, vectors and hosts, and of experimental conditions, means that few absolute answers can ever be obtained. Thus we cannot by any finite number of risk-assessment experiments, assign precise numerical probabilities to those risks judged extremely unlikely; and we can never consider the low probabilities to be zero under every conceivable condition. Nature has, by far, the longest string of risk-assessment experiments and her record must be carefully considered as well. NIH and the public must remain committed to continuous reevaluation of the NIH Guidelines as more and more is learned. I believe this action I am proposing is fully supported by the new information as well as the reassessment of prior information as described earlier in this decision.

Exempt All Experiments in E. coli K–12 From the Guidelines

Some called for the complete exemption from the NIH Guidelines of all recombinant DNA experiments using *E. coli* K–12 as the host.

The recommendation of the RAC was not, in fact, for complete exemption of such experiments. Three important safety features for these experiments that will not be exempt, but will according to the proposed decision form a special class under the Guidelines, are:

1. P1 Containment—Including the ban on mouth pipetting and the requirement that all biological wastes shall be decontaminated. Proper employment of P1 conditions eliminates the primary means of *E. coli* escape from the laboratory.

2. EK1—Allowing only *E. coli* K–12 strains and not allowing the use of conjugation proficient plasmids or generalized transducing phages. This greatly reduces the probability that any escaping *E. coli* K–12 would survive and transfer their recombinant DNA to other organisms.

3. IBC Oversight—Continuing local surveillance and registration of these experiments.

In addition, keeping these experiments under the Guidelines rather than exempting them means that any scale-up of the experiments beyond 10 liters will require prior NIH approval.

Treat Experiments Equally in which There Is or Is Not a Deliberate Attempt To Achieve Gene Expression

Some argued that recombinant DNA experiments should be treated no differently whether there is, or is not, a deliberate attempt to achieve gene expression.

In my Decision Document of July 1978, I wrote:

> Although clearly the time has come to revise the original NIH Guidelines for Recombinant DNA Research, it is not the time to conclude that they are being altered in preparation for their early abandonment. Understanding of gene regulation and expression is increasing inexorably and at an awesome pace. We may predict that ways will be found to achieve and control the translation of foreign genes by a variety of hosts. As the barriers to translation are dropped, some of the larger promise of recombinant technology will be realized. In some proportion to the harvest of positive results, a capability must be maintained for observing any capacity of these experiments to yield harmful products, and for communicating this to all who have an interest in similar experiments.

It is now one year later, and more ways to assure gene expression are being found.

Some of the recent papers reporting on gene expression in *E. coli* of inserted recombinant DNA include:

L. Villa-Komaroff et al., A Bacterial Clone Synthesizing Proinsulin, *Proc. Natl. Acad. Sci. USA 75*, 3727, 1978.

T. H. Fraser and B. J. Bruce, Chicken Ovalbumin Is Snythesized and Excreted by *Escherichia coli*, *Proc. Natl. Acad. Sci. USA 75*, 5936, 1978.

D. V. Goeddel et al., Expression in *Escherichia coli* of Chemically Synthesized Genes for Human Insulin, *Proc. Natl. Acad. Sci. USA 76*, 106, 1979.

T. M. Roberts et al., A General Method for Maximizing the Expression of a Cloned Gene, *Proc. Natl. Acad. Sci. USA 76*, 760, 1979.

C. J. Burrell et al., Expression in *Escherichia coli* of Hepatitis B Virus DNA Sequences Cloned in Plasmid pBR322, *Nature 279*, 43, 1979.

D. V. Goeddel et al., Direct Expression in *Escherichia coli* of a DNA Sequence Coding for Human Growth Hormone, *Nature 281*, 544, 1979.

The RAC, at their September 6–7 meeting in discussing the "*E. coli* K–12/P1 Recommendation," grappled with the issue of "biologically active polypeptides" produced by *E. coli* K–12 carrying recombinant DNA. As discussed in Section III–B above, there is only a remote possibility that *E. coli* K–12 carrying recombinant DNA would escape, survive, compete, and implant in an environmental niche, etc. Were such an unlikely event to occur, however, an *E. coli* K–12 deliberately programmed to achieve eukaryotic gene expression could conceivably be a greater hazard than an *E. coli* K–12 not so endowed. Therefore, experiments in which there is a deliberate attempt to achieve gene expression continue to merit special attention. For these reasons, as discussed below in Section III–E, my proposed decision is to place a special requirement on any experiment in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express a gene coding for a eukaryotic protein. For such an experiment, prior review and approval by the IBC would be required. This will allow the IBC to judge whether it wishes to require any added restrictions to be placed on the experiment, and to remain fully informed of its progress.

Include Ff Bacteriophages (Filamentous Single Strand Male Specific Bacteriophages Such As M13 and fd) With Lambda or Lambdoid Bacteriophages To Be Permissible Under the "E. coli K–12/P1 Recommendation"

The 1978 Guidelines define EK1 as follows: "The host is always *E. coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof) and variants of bacteriophage, such as lambda. The *E. coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages."

A memorandum of December 26, 1978, from the NIH Office of Recombinant DNA Activities to Institutional Biosafety Committees said, "The M13, fd, and other related single-strand bacteriophages * * * in conjunction with *E. coli* K–12 strains that do not contain conjugation-proficient plasmids (i.e., F^-) are acceptable for experiments that require EK1 biological containment. Since the host strains are not the natural hosts, the means of infection would involve transfection."

At the RAC meeting of February 15–16, 1979, a motion passed by a vote of 20 to 1, with 1 abstention, that "Conjugation-deficient mutants, such as the *traD* and *traI* mutants of the F factor may be used with the Ff bacteriophages if they have been shown to exhibit low levels of transfer (of the order of 10^{-5} or less) and also have low reversion rates (such as found for deletion or double-mutants)." This recommendation was accepted by NIH and transmitted by ORDA to IBCs on April 23.

(At the RAC meeting of May 21–23, 1979, a proposal to allow the use of bacteriophage vectors in *E. coli* K–12 hosts containing conjugation-proficient plasmids was rejected by a vote of 10 to 4, with 5 abstentions.)

Thus today EK1 experiments are being conducted under the NIH Guidelines using Ff bacteriophages.

The "*E. coli* K–12/P1 Recommendation" as passed by the RAC on September 6 includes the words "lambda or lambdoid bacteriophages," without mention of Ff bacteriophages. One alternative which I considerd was to add the words "or Ff" before "bacteriophages." However, in the absence of a specific recommendation from the RAC on this point, and because Ff bacteriophages have a broader host range than lambda or lambdoid bacteriophages, I am not adopting this alternative.

What shall be the status then of ongoing EK1 experiments involving Ff bacteriophages when the new Guidelines are promulgated? At the time of impending transition from the 1976 to the 1978 Guidelines, a memorandum was sent from ORDA to IBCs and Principal Investigators ("Transition to Revised Guidelines for Recombinant DNA Research") which allowed certain on-going experiments to continue at the

containment levels of the 1976 Guidelines.

In accordance with this precedent, I propose a similar policy be followed in the transition from the 1978 to the new Guidelines. Thus an investigator using an Ff bacteriophage could continue at the stipulated containment level of the 1978 Guidelines. For example, for the cloning of primate DNA in *E. coli* K-12, currently proceeding at the P3 + EK1 containment level, the experiment may continue using Ff bacteriophage at EK1 but must also remain at the P3 containment level.

I will ask the RAC to consider the use of Ff bacteriophages again at their next meeting.

Keep National Registration and Oversight of These Experiments

Some argued that Memoranda of Understanding and Agreement (MUA) covering the experiments falling under the "*E. coli* K-12/P1 Recommendation" should continue to be sent to NIH for national registration and oversight of these experiments.

In my decision document of July 1978, I wrote:

> In view of the impossiblity of Federal surveillance to enforce these standards externally, I feel it is essential to increase the authority and responsibility of the local institution. . . Primary responsibility for compliance with the rules must be located where the work is done. There it must be shared fully by principal investigators, those who work in their laboratories, institutional biosafety committees, and the institutional leaders. The NIH Office of Recombinant DNA Activities (ORDA) should be relieved of its burden of obligatory prior approval of certain experiments, so that it can better carry out, along with the RAC, two central functions. These are the continuing synthesis and interpretation of the Guidelines, and the maintenance of full communication among all who must use them.

I remain committed to shifting responsibility to local institutions for adherence to uniform, sensible guidelines. We are dealing in this decision with a class of experiments judged to be of minimal risk. There is the possiblity that some aspect of some future experiment in this class may yield information relevant to safety that should be transmitted to all laboratories where similar experiments are being conducted. The Guidelines (Sections IV-D-1; IV-D-3-e and IV-D-5-a-(2)] still require that "any significant problems with * * * the Guidelines and significant research-related accidents and illnessess" are to be reported to ORDA. ORDA can then quickly notify all IBCs; and IBCs, having a registry of such experiments, can take appropriate actions without delay. The transmission to ORDA of registration of experiments in this class does not enhance safety or otherwise serve the public interest. The relief from central data-handling for these experiments will leave ORDA free to perform other functions that are more likely to assure that use of recombinant DNA techniques is safe.

III-E. Proposed Decision of the Director, NIH On The "E. coli K-12/P1 Recommendation"

The "*E. coli* K-12/P1 Recommendation," as passed by the RAC on September 6, recommends that the experiments described in the proposal be "exempted from the Guidelines." Yet it also specifies that "P1 containment shall be used." In addition, it requires that these experiments be registered with the IBC but "with no requirement for review by the IBC prior to initiation of experiments."

Currently, exempt experiments (described in Section I-E of the Guidelines) do not have any containment level specified and are not required to be registered with the IBC.

Currently, experiments described in Part III of the Guidelines have containment levels specified and are required not only to be registered with the IBC but also to be approved by the IBC prior to initiation of the experiment. (In addition, an MUA must be submitted to NIH for approval, although for most experiments the project can proceed upon IBC approval, without prior approval by NIH.)

I believe the term "exempt experiment" as currently used in Section I-E of the Guidelines should be used only for experiments for which no containment level is specified and for which no registration with the IBC is required. Therefore, I propose not to accept the part of the "*E. coli* K-12/P1 Recommendation" which refers to the described experiments as exempt. Instead, my proposed decision is to describe the experiments covered in the "*E. coli* K-12/P1 Recommendation" in a new Section which to be added to the Guidelines, called Section III-0, as follows:

> III-0. *Classification of Experiments Using the E. coli K-12 Host-Vector Systems.* Most recombinant DNA experiments currently being done employ *E. coli* K-12 host-vector systems. These are the systems for which we have the most experience and knowledge.
>
> Some experiments using *E. coli* K-12 host-vector systems are prohibited (see Section I-D).
>
> Some experiments using *E. coli* K-12 host-vector systems are exempt from the Guidelines (see Sections I-E).
>
> Other experiments using *E. coli* K-12 shall use P1 physical containment and, except as specified in the last paragraph of this section, an EK1 host-vector system (i.e., (a) the host shall not contain conjugation-proficient plasmids or generalized transducing phages, and (b) lambda or lambdoid bacteriophages or non-conjugative plasmids shall be used as vectors). For these experiments no Memorandum of Understanding and Agreement (MUA) as described in Section IV-D-1-c need be submitted, nor is any registration with NIH necessary. However, for these experiments, prior to their initiation, investigators must submit to their Institutional Biosafey Committee (IBC) a registration document that contains a description of (a) the source(s) of DNA, (b) the nature of the inserted DNA sequences, and (c) the hosts and vectors to be used. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals but such review is not required prior to initiation of experiments. An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K-12 efficiently express any gene coding for a eukaryotic protein.
>
> Experiments involving the insertion into *E. coli* K-12 of DNA from prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempted from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I-E-4).
>
> For those not on the Appendix A list but which exchange genetic information [35] with *E. coli*, experiments may be performed with any *E. coli* K-12 vector (e.g. conjugative plasmids). When a non-conjugative vector is used, the *E. coli* K-12 host may contain conjugation-proficient plasmids, either autonomous or integrated, or generalized transducing phages.

The first two sentences of Section III-0 are moved from where they appear as the first two sentences of Section III-A in the 1978 Guidelines.

The next two sentences refer to the fact that some experiments using *E. coli* K-12 are prohibited (Section I-D) and that some are truly exempt from the Guidelines (Section I-E). The prohibitions override Section III-0; the six prohibitions are I-D-1 ("pathogenic organisms"), I-D-2 ("potent toxins"), I-D-3 ("plant pathogens"), I-D-4 ("deliberate release"), I-D-5 ("drug resistance trait"), and I-D-6 ("large scale").

Next in Section III-0 comes a rephrasing of the "*E. coli* K-12/P1 Recommendation," setting the containment level as P1 + EK1 for these experiments. Also included for these experiments is the requirement for registration with, but not prior approval by, the IBC, for most experiments and the statement that no MUA or other form of registration need be submitted to NIH. The requirement for IBC prior approval has been added for

experiments in which there is a deliberate attempt to have the *E. coli* K-12 efficiently express any gene coding for a eukaryotic protein.

The last two paragraphs of Section III-0 are a rephrasing of what appears as part of Section III-A-1-b-(1) of the 1978 Guidelines, including incorporation of rewording, as discussed below, in the first item in Part IV of this announcement.

Within Section IV of the Guidelines, a note has been inserted in Section IV-D-1-c reminding the reader that "no MUA is required for experiments described in Section III-0," and a note has been inserted in Section IV-D-5-a-(1) reminding the reader that "no prior approval by the IBC is required for most experiments described in Section III-0."

At places in the Guidelines describing "return to host of origin" type experiments (i.e., Sections III-B-2, III-C-5, III-C-6, III-C-7-a, and III-C-7-b), the phrase "appropriate containment" has been replaced by "P1."

Section III-A of the Guidelines, and its subsections, previously referring to experiments using *E. coli* K-12 as the host have been rewritten to refer to certain other certified HV1 and HV2 systems, as listed in Appendix D of the November 1979 Guidelines.

It was the intent of the RAC that "the principle of equivalency of HV systems with EK systems applies at the present time only to the setting of containment levels for shotgun experiments. It does not apply at the present time to lowering of containment levels for characterized or purified DNA preparations and clones, to returning DNA segments to non-HV1 host of origin, etc." (Federal Register, July 20, 1979). Therefore, changes have been made in Section III-A-1-a-(1), III-A-3-a, III-A-3-b, IV-D-1-c-(3), IV-D-1-e, and IV-E-1-b-(3)-(e), indicating that lowering of containment levels for characterized or purified DNA preparations or clones requires prior approval by the NIH and that IBC approval alone is no longer sufficient. In accordance with Section IV-E-1-b of the NIH Guidelines and based on the extensive analysis given above, I find that these proposed actions on the "*E. coli* K-12/P1 Recommendation" comply with the Guidelines and present no significant risk to health or the environment.

Appendix A gives the membership at the Recombinant DNA Advisory Committee at the May 1979 meeting; Appendix B gives the membership at the September 1979 meeting.

IV. Other Recommendations on "Major Actions" Made at the September 6-7, 1979, RAC Meeting

In addition to the "*E. coli* K-12/P1 Recommendation" discussed above, five other recommendations on "major actions" were made at the September 6-7 RAC meeting. These are discussed below, and my proposed action on them is given. In accordance with Section IV-E-1-b of the NIH Guidelines, I find that these proposed actions comply with the Guidelines and present no significant risk to health or the environment.

Proposed Amendment of Sections II-D-1-a-(1) and III-A-1-b-(1) of the 1978 Guidelines

In response to a suggestion made in a letter of May 16, 1979, from Dr. Nickolas J. Panopoulos, of the University of California at Berkeley, proposed changes in the Guidelines were published for comment in the Federal Register on July 31, 1979, as follows:

1. Proposed to be inserted at the end of Section II-D-1-a-(1) of the Guidelines were the words "except as specified under Section III-A-1-b-(1)."

2. Proposed to be inserted at the end of section III-A-1-b-(1) of the Guidelines were the words "When a non-conjugative vector is used, the *E. coli* K-12 host may contain conjugative proficient plasmids, either autonomous or integrated, or generalized transducing phages. In general, for experiments in this category, the *E. coli* K-12 host may contain such plasmids or phages provided that the physical containment level is raised one step."

During the 30-day comment period, no comments were received.

At the RAC meeting on September 6-7, 1979, this item was discussed. A motion was passed by the RAC by a vote of 12 to 0 to:

1. Insert at the end of Section II-D-1-a-(1) of the 1978 Guidelines the words "except as specified under Section III-A-1-b-(1)"; and

2. Insert prior to the last sentence of Section II-A-1-b-(1) of the 1978 Guidelines, the words "When a non-conjugative vector is used, the *E. coli* K-12 host may contain conjugation proficient plasmids, either autonomous or integrated, or generalized transducing phages."

I propose to accept these recommendations. However, due to my proposed action on the "*E. coli* K-12/P1 Recommendation" (as described above in Part III-E of this announcement), further changes are necessary in incorporating these recommendations into the proposed revised NIH Guidelines. Thus the insert at the end of Section II-D-1-a-(1) reads, "except as specified in Section III-0," and the added words "When a nonconjugative vector is used, the *E. coli* K-12 host may contain conjugation-proficient plasmids, either autonomous or integrated, or generalized transducing phages" appear in Section III-0.

Proposed Exemption for Pseudomonas Putida and Pseudomonas Fluorescens

At its May 21-23, 1979, meeting, the RAC considered a request by Dr. N. Ornston of Yale University to add *Pseudomonas putida* and *Pseudomonas fluorscens* to the exempt list in Appendix A of gram-negative organisms that exchange DNA by known physiological processes. The RAC, at that time, voted 17 to 1, with 1 abstention, to defer action on the proposal, since several members felt that the transduction data were incomplete, and an error was made in the Federal Register notice. A request for additional data on the reversion frequencies for the transduced markers was made on recommending deferment.

After receipt of additional documentation on the chromosomal genetics of *Pseudomonas*, the following notice was placed in the Federal Register on July 31, 1979, for comment:

> Dr. N. Orsnston of Yale University has proposed, in accord with Section I-E-4 of the Guidelines, that *Pseudomonas putida* and *Pseudomonas fluorescens* be added to the exempt list in Appendix A of gram-negative organisms that exchange DNA by known physiological processes. Further information documenting the exchange of genetic information between these two species and those in Appendix A is available from the Office of Recombinant DNA Activities.

No comments were received during the 30-day comment period.

At the September 6-7 RAC meeting the data on exchange and homology were discussed and a motion to add *Pseudomonas putida* and *Pseudomonas fluorescens* to the Appendix A list passed by a vote of 11 to 0, with 3 abstentions.

I propose to accept this recommendation and have added *Pseudomonas putida* and *Pseudomonas fluroescens* to Sublist A in Appendix A, of the proposed revised Guidelines.

Cloning in Bacillus Subtilis an Streptomyces Coelicolor

In response to a request from Dr. Stanley Cohen of Stanford University, the following proposal was published for comment in the Federal Register on July 31, 1979:

> (a) *Bacillus subtilis* strains that do not carry an asporogenic mutation can be used as hosts specifically for the cloning of DNA

derived from *E. coli* K-12 and *Streptomyces coelicolor* using NIH-approved *Staphylococcus aureus* plasmids as vectors under P2 conditions.

(b) *Streptomyces coelicolor* can be used as a host for the cloning of DNA derived from *B. subtilis, E. coli* K-12, or from *S. aureus* vectors that have been approved for use in *B. subtilis* under P2 conditions.

During the 30-day comment period, no comments were received.

This proposal had been discussed at the February and May 1979 RAC meetings. At the September RAC meeting, after discussion of the safety of these systems including the issue of spore formation, the final votes on these proposals were 9 in favor, none opposed, with 8 abstentions, to approve part (b) dealing with cloning in *Streptomyces coelicolor*, and 8 in favor, 5 opposed, with 5 abstentions, to approve part (a) dealing with cloning in *Bacillus subtilis*.

I propose to accept these recommendations, and they have been inserted into Appendix E of the proposed revised Guidelines.

Use of Agrobacterium Tumefaciens as a Host-Vector System

The following notice appeared for comment in the Federal Register on July 31, 1979:

At its May 21–23, 1979, meeting, the RAC recommended approval, at the P3 level of physical containment, of specific experiments involving introduction of well-characterized fragments of eukaryotic DNA into *Agrobacterium tumefaciens* carrying a Ti plasmid, using an EK2 plasmid vector coupled to a fragment of the Ti plasmid and/or the origin of replication of a cryptic *A. tumefaciens* plasmid, and introduction of these bacteria into plant parts or cells in culture under P3 conditions. Approval is now requested by Dr. M. D. Chilton for modification of the experimental procedure as follows:

Cloned desired fragments from any non-prohibited source may be transferred into *Agrobacterium tumefaciens* containing a Ti plasmid (or derivatives thereof), using a non-conjugative *E. coli* plasmid vector coupled to a fragment of the Ti plasmid and/or the origin of replication of an *Agrobacterium* plasmid, under containment conditions one step higher than would be required for the desired DNA in EK1 or HV1 systems. Transfer into plant parts or cells in culture would be permitted at the same containment level (one step higher).

During the 30-day comment period, no comments were received.

At the September RAC meeting, after discussion of the safety of this system, a motion to approve this proposal passed by a vote of 9 in favor, 6 opposed, with 2 abstentions.

I propose to accept this recommendation and have inserted into Appendix E of the proposed revised Guidelines the text as it appeared in the July 31 Federal Register—i.e., "Cloned desired fragments. . . . (one step higher)"—with one change in wording. This change necessitated by my proposed action on the "*E. coli* K-12/P1 Recommendation" (see Part III of this announcement above), is to substitute for the words ". . . in EK1 or HV1 systems . . ." the words ". . . in HV1 systems (i.e., one step higher physical containment than that specified in the subsections of Section III-A) . . ."

Proposed Supplement to the NIH Guidelines

The 1978 Guidelines say in Section IV-F-4, "(Provisions for protection of proprietary information as permitted under current DHEW authorities will be proposed as a future supplement to these Guidelines.)"

On August 3, 1979, there was published in the Federal Register, for public comment, a proposed supplement to the NIH Guidelines.

The August 3 Federal Register notice first contained background information as follows:

On December 22, 1978, the Director, National Institutes of Health, with the approval of the Assistant Secretary for Health and the Secretary of Health, Education, and Welfare, issued revised Guidelines for Research Involving Recombinant DNA Molecules [43 FR 60108]. These Guidelines were accompanied in the Federal Register by a Notice of Intent to Propose Regulations issued by the Food and Drug Administration. In addition, the Secretary sent letters to Administrator Douglas Costle, Environmental Protection Agency, and to Secretary of Agriculture Bob Bergland, requesting comparable actions to ensure a commonality of standards throughout the private sector. In July the Secretary sent a similar request to Secretary of Labor Ray Marshall.

Several responses to the FDA notice questioned that agency's legal authority to regulate private research in this field. In view of these comments, NIH Director Donald S. Fredrickson and the Commissioner of Food and Drugs, Donald Kennedy, developed a draft supplement to the NIH Guidelines that would extend them on a voluntary basis to industry. This draft was reviewed by Peter Libassi, then General Counsel for the Department, who also consulted with representatives from the pharmaceutical industry and from public interest and environmental organizations. The representatives from the pharmaceutical industry considered the supplement to provide a feasible basis for voluntary compliance; the representatives from the other groups considered a voluntary system insufficient and urged that mandatory compliance be achieved through legislation or regulation.

In light of those discussions it was agreed that the draft supplement prepared by NIH and FDA should also be reviewed by the Federal Interagency Advisory Committee on Recombinant DNA Research which includes all relevant Federal research and regulatory agencies. This Committee, created in October 1976 to consider extension of the Guidelines nationally, had recommended in March 1977 that legislation be developed. On July 16, 1979, the Committee met to consider the draft supplement and alternative approaches to extent the revised NIH Guidelines to the private sector. It was the Committee's unanimous opinion that NIH should proceed to publish for public comment the draft supplement to the NIH Guidelines. The conclusion was not unanimous that the voluntary approach would achieve complete compliance within the private sector.

On the basis of the recommendations by the Interagency Committee, the Director, NIH, invites public comment on the proposed supplement to the NIH Guidelines, which is set forth below * * *

The August 3 Federal Register notice then gave the text of proposed sections to be added to the Guidelines. The full text is not repeated in this announcement. The headings of the proposed sections are:

IV-G-5. Voluntary Compliance.; VI. Voluntary Compliance.; VI-A. Basic Policy.; VI-B. IBC Approval.; VI-C. Registration.; VI-D. Certification of Host-Vector Systems.; VI-E. Request for Exceptions.; and VI-F. Protection of Proprietary Data.

During the 30-day comment period, five letters were received.

A representative of the AFL-CIO wrote:

We firmly believe that regulatory authority over health and safety of workers must be the responsibility of the Occupational Safety and Health Administration. Promulgation of your inadequate and impotent Guideline additions can only hamper efforts to provide proper oversight by OSHA. Therefore, these Guideline sections should not be adopted. NIH has no business intruding upon the affairs of non-grantees or other government agencies.

A representative of the Environmental Defense Fund wrote:

In the absence of statutory authority enabling NIH inspection and enforcement of industrial experiments and providing for stiff penalties for violations, approval is a meaningless exercise. Indeed, its only benefit is to the industrial sponsor, who is then free to proclaim that its experiments are safe and above public concern. From a political standpoint, we fear that a voluntary program, no matter how insufficient, will provide a public relations weapon to industry and an argument against mandatory control * * * voluntary compliance programs have never worked and never will.

Dr. Susan Wright wrote that the "proposal is ill-advise * * * 'voluntary compliance' means that the private sector will obey the guidelines when it is

in its interests to do so and not otherwise."

A representative of Genex Corporation wrote concerning the requirement for membership on Institutional Biosafety Committees. He submitted proposed wording to be inserted in Section VI-B.

The New York State Commissioner of Health wrote, "It seems clear that Federal legislation offers the best prospect of establishing a uniform, enforceable set of minimum standards. The individual states could retain the option of setting more stringent requirements."

At the September RAC meeting, there was considerable discussion of the proposed supplement. John Adams of the Pharmaceutical Manufacturers Association indicated that the PMA member firms engaged in recombinant DNA research fully endorse the supplement and will fully comply with the Guidelines. In reply to a question from the RAC, Dr. Irving Johnson of Eli Lilly and Company indicated that Lilly's IBC had three members not affiliated with the company among its nine IBC members. Representatives of Genentech, Eli Lilly and Company, and Genex said their companies would comply with the Guidelines.

One RAC member said he favored mandatory compliance as the long term solution but thought it was fine to begin with a voluntary system. Others spoke strongly in favor of the supplement, to initiate a test period to see if industry does indeed comply. Representatives of the National Science Foundation and the National Institute for Occupational Safety and Health reviewed the unimous recommendation of the Interagency Committee on Recombinant DNA Research to proceed with the voluntary supplement. A representative of the Office of Science and Technology Policy endorsed the proposal.

A motion to accept Section IV-G-5 and Part VI as they appeared in the Federal Register on August 3 passed with a vote of 11 in favor, none opposed, with 4 abstentions.

I propose to accept these recommendations and have added these sections to the proposed revised Guidelines.

Appendix C gives the membership of the Interagency Committee on Recombinant DNA Research.

Appendix A—Membership of the Recombinant DNA Advisory Committee at the May 1979 Meeting

Recombinant DNA Advisory Committee

SETLOW, Jane K., Ph.D., (Chairman), Biologist, Brookhaven National Laboratory, Upton, Long Island, New York 11973, 516-345-3420.

AHMED, Abdul Karim, Ph.D., Senior Staff Scientist, Natural Resources Defense Council, Inc., 122 East 42nd Street, New York, New York 10017, 212-949-0049.

BALTIMORE, David, Ph.D., Professor of Biology, Massachusetts Institute of Technology, Cambridge, Massachusetts 02139, 617-253-6410.

BROADBENT, Francis E., Ph.D., Professor of Soil Microbiology, Department of Land, Air and Water Resources, University of California, Davis, California 95616, 916-752-0198.

CAMPBELL, Allan M., Ph.D., Professor, Department of Biology, Stanford University, Stanford, California 94305, 415-497-1170.

CASON, Zelma, Supervisor of Cytopathology Laboratory, University of Mississippi Medical Center, Jackson, Mississippi 39216, 601-968-5547.

DAY, Peter R., Ph.D., Chief, Division of Genetics, Connecticut Agricultural Experiment Station, New Haven, Connecticut 06504, 203-789-7258.

GOLDSTEIN, Richard, Ph.D., Assistant Professor of Microbiology and Molecular Genetics, Harvard Medical School, Boston, Massachusetts 02115, 617-732-1911.

GOTTESMAN, Susan K., Ph.D., Senior Investigator, Laboratory of Molecular Biology, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014, 301-496-3524.

HORNICK, Richard B., M.D., Chairman, Department of Medicine, University of Rochester School of Medicine, Rochester, New York 14642, 716-275-2871.

KING, Patricia A., J.D., Professor of Law, Georgetown University Law Center, Washington, D.C. 20001, 202-624-8295.

KRIMSKY, Sheldon, Ph.D., Acting Director, Program in Urban Social and Environmental Policy, Tufts University, Medford, Massachusetts 02155, 617-628-5000 x6159.

KUTTER, Elizabeth M., Ph.D., c/o Department of Nutrition, University of California, Davis, California 75616, 916-752-3389.

NOVICK, Richard P., M.D., Chairman of Plasmid Biology, Public Health Research Institute, New York, New York 10016, 212-481-0746.

PARKINSON, David K., B.M., B.Ch., Associate Professor of Occupational Health, University of Pittsburgh, Pittsburgh, Pennsylvania 15261, 412-624-3041.

PINON, Ramon, Ph.D., Assistant Professor of Biology, B-022 Bonner Hall, University of California, San Diego, California 92093, 714-452-2452.

PROCTOR, Samuel D., Ph.D., Professor of Education, Rutgers University, New Brunswick, New Jersey 08903, 201-932-7389.

REDFORD, Emmette S., Ph.D., LL.D. (79), Ashbel Smith Professor of Government and Public Affairs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, Austin, Texas 78712, 512-471-4962 x234.

ROWE, Wallace P., M.D., Chief, Laboratory of Viral Diseases, National Institute of Allergy & Infectious Diseases, National Institutes of Health, Bethesda, Maryland 20014, 301-496-2613.

SPIZIZEN, John, Ph.D., Member and Chairman, Department of Microbiology, Scripps Clinic & Research Foundation, La Jolla, California 92037, 714-454-3861 x367

THORNTON, Ray H., J.D., Executive Director, Joint Educational Consortium, Henderson State University, Cuachita Baptist University, P.O. Box 499, Arkadelphia, Arkansas 71923, 501-246-9283

WALTERS, LeRoy, Ph.D., Director, Center for Bioethics, Kennedy Institute, Georgetown University, Washington, D.C. 20057, 202-625-2371.

WILLIAMS, Luther S., Ph.D., Associate Professor of Biology and Assistant Provost, Department of Biological Sciences, Purdue University, West Lafayette, Indiana 47907, 317-493-0211.

YOUNG, Frank E., M.D., Ph.D., Dean, School of Medicine & Dentistry, University of Rochester, Rochester, New York 14642, 716-275-3407.

ZAITLIN, Milton, Ph.D., Professor, Department of Plant Pathology, Cornell University, Ithaca, New York 14853, 607-256-3105.

GARTLAND, William J., Jr., Ph.D., (Executive Secretary), Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20014, 301-496-6051.

Recombinant DNA Advisory Committee

Non-Voting Representatives

Center for Disease Control

LaMotte, Louis C., Ph.D., Director, Licensure in Proficiency Testing Division, Bureau of Laboratories, Center for Disease Control, Atlanta, Georgia 30333, 404-329-3824.

Department of Agriculture

TOLIN, Sue A., Ph.D., Science and Education Administration, Cooperative Research, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-5741.

FULKERSON, John F., Ph.D. (ALT), Science and Education Administration, Cooperative Research, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-5741.

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GALLER, Sidney R., Ph.D., Room 3425, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-4335.

GORDON, George S., Ph.D., (ALT), Room 3424, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-2565.

Department of Energy

DUDA, George Ph.D., Division of Biomedical and Environmental Research, U.S. Department of Energy, Washington, D.C. 20545, 202-353-3651.

EDINGTON, Charles W., Ph.D. (ALT), Deputy Director, Office of Health and Environmental Research, U.S. Department of Energy, Washington, D.C. 20250, 202-353-3251.

Department of the Interior

PIMENTEL, Mariano B., Ph.D., Room 7045, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-2081.

Department of State

WALSH, William J., III, Biomedical Research Liaison and Health Affairs Officer, Oceans and International Environmental and Scientific Affairs, U.S. Department of State, Washington, D.C. 20520, 202–632–4824.

Department of Transportation

CUSHMAC, George E., Ph.D., Chemist, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590, 202–755–4906.

Food and Drug Administration

GRYDER, Rosa, Ph.D., Staff Science Advisor, HFY–311, Food and Drug Administration 56, Rockville, Maryland 20857, 301–433–4491.

National Aeronautics and Space Administration

YOUNG, Richard S., Ph.D., Director of Planetary Biology, National Aeronautics and Space Administration, Washington, D.C. 20546, 202–755–3732.

National Science Foundation

LEWIS, Herman W., Ph.D., Senior Scientist for Recombinant DNA, Division of Physiology, Cellular and Molecular Biology, National Science Foundation, Washington, D.C. 20550, 202–632–4200.

HARRIMAN, Philip Ph.D. (ALT), Program Director for Genetic Biology, Room 326, National Science Foundation, Washington, D.C. 20550, 202–632–5985.

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SCHULTZ, Jane S., Ph.D., Chief, Program Development and Review Division, U.S. Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, 202–389–5065.

BERMAN, Howard M., Ph.D. (ALT), Health Scientist, Program Development and Review Division, 810 Vermont Avenue, N.W., Washington, D.C. 20420, 202–389–5065.

Department of Labor

PICCIANO, Dante, Ph.D., Office of Carcinogen Identification and Classification, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, 202–523–7177.

Recombinant DNA Advisory Committee

Liaison Representatives

HEDRICH, Richard, Ph.D., Coordination Program of Science Technology & Human Value, National Endowment for the Humanities, Washington, D.C. 20506, 202–382–5996.

WEISS, Daniel L., M.D., Assembly of Life Sciences, National Academy of Sciences, Washington, D.C. 20418, 202–389–6315.

Appendix B—Membership of the Recombinant DNA Advisory Committee at the September 1979 Meeting

Recombinant DNA Advisory Committee

Chairman

SETLOW, Jane K., Ph.D., Biologist, Brookhaven National Laboratory, Upton, Long Island, New York 11973, 516–345–3420.

AHMED, Abdul Karim, Ph.D., Senior staff Scientist, Natural Resources Defense Council, Inc., 122 East 42nd Street, New York, New York 10017, 212–949–0049.

BALTIMORE, David, Ph.D., Professor of Biology, Massachusetts Institute of Technology, Cambridge, Massachusetts 02139, 617–253–6410.

BRILLE, Winston, Jr., Ph.D., Professor of Bacteriology, Department of Bacteriology, University of Wisconsin, Madison, Wisconsin 53706, 608–262–3567.

BROADBENT, Francis E., Ph.D., Professor of Soil Microbiology, Department of Land, Air and Water Resources, University of California, Davis, California 95616, 916–752–0198.

CAMPBELL, Allan M., Ph.D., Professor, Department of Biology, Stanford University, Stanford, California 94305, 415–497–1170.

CASON, Zelma, Supervisor of Cytopathology Laboratory, University of Mississippi Medical Center, Jackson, Mississippi 39216, 601–968–5547.

GOLDSTEIN, Richard, Ph.D., Assistant Professor of Microbiology and Molecular Genetics, Harvard Medical School, Boston, Massachusetts 02115, 617–732–1911.

GOTTESMAN, Susan K., Ph.D., Senior Investigator, Laboratory of Molecular Biology, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20205, 301–496–3524.

HARRIS, Jean L., M.D., Secretary of Human Resources, Commonwealth of Virginia, Office of Governor, Post Office Box 1475, Richmond, Virginia 23212, 804–358–1170.

KING, Patricia A., J.D., Professor of Law, Georgetown University Law Center, Washington, D.C. 20001, 202–624–8295.

KRIMSKY, Sheldon, Ph.D., Acting Director, Program in Urban Social and Environmental Policy, Tufts University, Medford, Massachusetts 02155, 617–628–5000, x6159.

MAAS, Werner K., Ph.D., Professor of Microbiology, Department of Microbiology, New York University School of Medicine, New York, New York 10016, 212–679–3200, x2319.

MASON, James O., M.D., Dr. P.H., Executive Director, Utah State Department of Health, Post Office Box 2500, Salt Lake City, Utah 84110, 801–533–6111.

NIGHTINGALE, Elena O., M.D., Ph.D., Director, Division of Health Promotion and Disease and Senior Professional Associate, Institute of Medicine, National Academy of Sciences, Washington, D.C. 20418, 202–389–6721.

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PROCTOR, Samuel D., Ph.D., Professor of Education, Rutgers University, New Brunswick, New Jersey 08903, 201–932–7389.

THORNTON, Ray H., J.D., Executive Director, Joint Educational Consortium, Henderson State University, Ouachita Baptist University, P.O. Box 499, Arkadelphia, Arkansas 71923, 501–246–9283.

WALTERS, LeRoy, Ph.D., Director, Center for Bioethics, Kennedy Institute, Georgetown University, Washington, D.C. 20057, 202–625–2371.

WILLIAMS, Luthur S., Ph.D., Professor of Biology and Assistant Provost, Department of Biological Sciences, Purdue University, West Lafayette, Indiana 47907, 317–493–0211.

YOUNG, Frank E., M.D., Ph.D., Dean, School of Medicine & Dentistry, University of Rochester, Rochester, New York 14642, 716–275–3407.

ZAITLIN, Milton, Ph.D., Professor, Department of Plant Pathology, Cornell University, Ithaca, New York 14853, 607–256–3105.

Executive Secretary

GARTLAND, William J., Jr., Ph.D., Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, 301–496–6051.

Recombinant DNA Advisory Committee

Non-Voting Representatives

Center for Disease Control

LaMOTTE, Louis C., Ph.D., Director, Licensure in Proficiency Testing Division, Bureau of Laboratories, Center for Disease Control, Atlanta, Georgia 30333, 404–329–3824.

National Institute for Occupational Safety and Health

MYERS, Melvin L., Director, Office of Program Planning and Evaluation, National Institute for Occupational Safety and Health, Rockville, Maryland 20847, 301–443–4364.

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Department of Commerce

GALLER, Sidney R., Ph.D., Room 3425, U.S. Department of Commerce, Washington, D.C. 20230, 202–377–4335.

GORDON, George S., Ph.D. (ALT), Room 3424, U.S. Department of Commerce, Washington, D.C. 20230, 202–377–2565.

Department of Energy

DUDA, George, Ph.D., Division of Biomedical and Environmental Research, U.S. Department of Energy, Washington, D.C. 20545, 202–353–3651.

EDINGTON, Charles W., Ph.D. (ALT), Deputy Director, Office of Health and Environmental Research, U.S. Department of Energy, Washington, D.C. 20250, 202–353–3251.

Department of the Interior

PIMENTEL, Mariano B., Ph.D., Room 7045, U.S. Department of the Interior, Washington, D.C. 20240, 202–343–2081.

Department of Justice

CANNON, David C., Jr., General Litigation Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, 202–633–2846.

Department of State

WALSH, William J., III, Biomedical Research Liaison and Health Affairs Officer, Oceans and International Environmental and Scientific Affairs, U.S. Dpartment of State, Washington, D.C. 20520, 202–632–4824.

Department of Transportation

CUSHMAC, George E., Ph.D., Chemist, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590, 202–755–4906.

Environmental Protection Agency

BANKS, Darryl R., Ph.D., Executive Assistant to the Assistant Administrator for Research and Development, Office of Research and Development, United States Environmental Protection Agency, RD 672, 913 West Tower, Washington, D.C. 20460, 202–755–0122.

Food and Drug Administration

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National Aeronautics and Space Administration

YOUNG, Richard S., Ph.D., Director of Planetary Biology, National Aeronautics and Space Administration, Washington, D.C. 20546, 202–755–3732.

National Science Foundation

LEWIS, Herman W., Ph.D., Senior Scientist for Recombinant DNA, Division of Physiology, Cellular and Molecular Biology, National Science Foundation, Washington, D.C. 20550, 202–632–4200.

HARRIMAN, Philip, Ph.D. (ALT), Program Director for Genetic Biology, Room 326, National Science Foundation, Washington, D.C. 20550, 202–632–5985.

Veterans Administration

SCHULTZ, Jane S., Ph.D., Chief, Program Development and Review Division, U.S. Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, 202–389–5065.

BERMAN, Howard M., Ph.D. (ALT), Health Scientist, Program Development and Review Division, 810 Vermont Avenue, N.W., Washington, D.C. 20420, 202–389–5065.

Department of Labor

PICCIANO, Dante, Ph.D., Office of Carcinogen Identification and Classification, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, 202–523–7177.

Appendix C—Membership of the Interagency Committee on Recombinant DNA Research

Donald S. Fredrickson, M.D., Director, National Institutes of Health, Building 1, Room 124, Bethesda, Maryland 20205, 301,496–2433.

Executive Secretary

Joseph G. Perpich, M.D., J.D., Associate Director for Program Planning and Evaluation, National Institutes of Health, Building 1, Room 137, Bethesda, Maryland 20205, 301–496–3152.

Department of Agriculture

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Department of Commerce

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Department of Defense

William R. Beisel, M.D., Scientific Advisor, U.S. Army Medical Research Institute of Infectious Diseases, Ft. Detrick Frederick, Maryland 21701, 8–935–2772.

Department of Energy

Dr. Charles W. Edington, Deputy Director, Office of Health and Environmental Research, E201 Germantown, Department of Energy, Washington, D.C. 20545, 301–353–3251.

Walter H. Weyzen, M.D., Human Health and Assessments Division, Office of Health and Environmental Research, E201 Germantown, Department of Energy, Washington, D.C. 20545, 301–353–5355.

Environmental Protection Agency

Dr. Vilma R. Hunt, Deputy Assistant Administrator for Health and Ecological Effects, Environmental Protection Agency, 401 M Street, S.W., Room 3100, Washington, D.C. 20460, 202–426–2382.

Executive Office of the President

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Mrs. Carroll L. Bastian, Senior Staff Member for Environmental Health and Toxic Substances, Council on Environmental Quality, 722 Jackson Place, N.W., 202–395–4980.

Department of Health, Education, and Welfare

Office of the Assistant Secretary for Health

Lowell T. Harmison, Ph.D., Science Advisor, Office of Health Policy, Research, and Statistics, OASH, Parklawn Building, Room 17A–55, Rockville, Maryland 20857, 301–443–2650.

Center for Disease Control

John H. Richardson, D.V.M., Director, Office of Biosafety, Center for Disease Control, 1600 Clifton Avenue, Atlanta, Georgia 30333, 8–236–3883.

Anthony Robbins, M.D., Director, National Institute for Occupational Safety and Health, Parklawn Building, Room 8–05, Rockville, Maryland 20857, 301–443–1530.

Food and Drug Administration

Rosa M. Gryder, Ph.D., Staff Science Advisor, Food and Drug Administration, Parklawn Building, Room 11–47, Rockville, Maryland 20857, 301–443–4490.

John C. Petricciani, M.D., Deputy Director, Division of Pathology, Bureau of Biologics, FDA, NIH Building 29, Room 130, Bethesda, Maryland 20205, 301–496–9320.

Department of the Interior

Mariano Pimentel, M.D., Medical Director, Department of the Interior, 18th and C Streets, N.W., Room 7045, Washington, D.C. 20240, 202–343–2081.

Department of Justice

Mr. David Cannon, General Litigation Section, Department of Justice, 10th St. & Constitution Ave., N.W., Room 2133, Washington, D.C. 20530, 202–633–2846.

Department of Labor

Eula Bingham, Ph.D., Assistant Secretary for Occupational Safety and Health, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–9361.

National Aeronautics and Space Administration

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National Science Foundation

Herman W. Lewis, Ph.D., Head, Section on Cellular Biology, Division of Physiology, Cellular and Molecular Biology, National Science Foundation, 1800 G Street, N.W., Room 326, Washington, D.C. 20550, 301–632–4200.

Philip D. Harriman, Ph.D., Program Director of Genetic Biology, National Science Foundation, 1800 G Street, N.W., Room 326, Washington, D.C. 20550, 202–632–5985.

Nuclear Regulatory Commission

Mr. Frank Swanberg, Jr., Chief, Health and Environmental Research Branch, Nuclear Regulatory Commission, Mail. Stop 1130SS, Washington, D.C. 20555, 202–427–4350.

Department of State

Mr. William J. Walsh III, Biomedical Research Liaison and Health Affairs

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Department of Transportation

Mr. Douglas A. Crockett, Department of Transportation, Transpoint Building, Room 6405, 2100 Second Street, S.W., Washington, D.C. 20590, 202–426–2075.

U.S. Arms Control and Disarmament Agency

Robert Mikulak, Ph.D., Physical Science Officer, Multilateral Affairs/Advanced Technology, U.S. Arms Control and Disarmament Agency, 21st Street and Virginia Ave., N.W., Washington, D.C. 20451, 202–632–3424.

Veterans Administration

Jane S. Schultz, Ph.D., Chief, Program Review Division, Veterans Administration Central Office, 810 Vermont Avenue, N.W., Room 755, Washington, D.C. 20420, 202–389–5065, 8–374–5678 (Mich.).

Additional Announcement of the Director, NIH

Section IV–E–1–b–(3)–(d) of the Guidelines gives responsibility to the Director, NIH, for "authorizing, under procedures specified by the RAC, large-scale experiments (i.e., involving more than 10 liters of culture) for recombinant DNAs that are rigorously characterized and free of harmful sequences."

On October 5, 1979, the Director, NIH, on the recommendation of the Recombinant DNA Advisory Committee, approved a request from Lilly Research Laboratories for the lowering of containment and large-scale culture of EK1 host-vector systems carrying the chemically synthesized insulin A chain and B chain separately. The request was approved with the understanding that Lilly Research Laboratories have agreed to permit an observer, designated by NIH, to visit the facilities if NIH should choose to inspect the site.

The principal investigator is Dr. Lawrence E. Day. The work is to be done, as stipulated in the submission by Lilly Research Laboratories, in a "P2 laboratory containing fermenters designed and pretested to totally contain the organisms until they are chemically or physically killed at the end of each fermentation . . . at the plant facilities at 1200 South Kentucky Avenue, Indianapolis, Indiana, 46206."

Dated: November 26, 1979.

Donald S. Fredrickson,

Director National Institutes of Health.

[FR Doc. 79–36842 Filed 11–29–79; 8:45 am]

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Federal Register

Friday
November 30, 1979

Part VIII

Department of Agriculture

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Proposed Changes

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes various changes in requirements for the Special Supplemental Food Program for Women, Infants and Children (WIC Program), in order to comply with Section 3 of Pub. L. 95–627 which amends Section 17 of the Child Nutrition Act of 1966 and extends the authorization for the WIC Program through FY 1982. This proposal deals with the kinds and quantities of supplemental foods provided under the WIC Program.

DATES: To be assured of consideration comments must be received on or before January 28, 1980.

ADDRESS: Send comments to Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jane McNeil, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–8206.

SUPPLEMENTARY INFORMATION: Pub. L. 94–105 specified key nutrients which were to be provided by WIC Program supplemental foods. New WIC Program legislation enacted by Pub. L. 95–627 requires the Secretary to design food packages to contain nutrients which, based on the latest nutritional research, are shown to be lacking in the diets of the WIC Program target population. The Secretary is required to ensure to the degree possible that the fat, sugar and salt content of the prescribed foods is appropriate. State agencies may request substitutions in the WIC food packages to allow for different cultural eating patterns. The substitution must provide as nearly as possible the nutritional equivalent of the target nutrients offered through the supplemental food which is replaced, and the substitution must be approved by FNS. Pub. L. 95–627 allows the Secretary to donate commodities at a State agency's request for use in the Program.

These requirements are proposed to become effective 6 months after final publication to allow State agencies that period of time to phase these changes into their food delivery systems. These proposals will ensure that the food packages are closely aligned to participants' needs for supplemental foods, will encourage breastfeeding and will result in improved services to WIC participants. As required by Executive Order 12004 and Department regulations, a draft Impact Analysis Statement concerning the major proposals is available from the address listed above.

The Department believes that public participation in policy development serves as a valuable information source for developing and assessing program alternatives. The Department further believes that any program which it administers should reflect the needs and viewpoints of the public served by the program. Because public participation serves as a means of improving the effectiveness of the Department programs, public input is particularly important prior to the development of regulations. Consequently, prior to issuing this proposal the Department actively sought the advice and assistance of knowledgeable individuals, groups and organizations which were willing to offer assistance and expertise in developing regulations that would most effectively satisfy the health and nutritional needs of the eligible population. The following steps were taken in the development of this proposal.

National Advisory Council on Maternal, Infant and Fetal Nutrition

Input on the WIC food packages has been periodically received from the Advisory Council established by Pub. L. 94–105. The members of the Council have widely diversified backgrounds. The membership includes State and local health officials and administrators of the WIC and Commodity Supplemental Food (CSF) Programs, representatives of the Department of Health, Education and Welfare, three parent participants in the programs, a pediatrician, an obstetrician, representatives from migrant farmworker and advocacy organizations, and a person involved in the retail sale of foods used in the Program. This council has the ability and expertise to consider all aspects of the food packages and is extremely helpful in providing insight into how the food packages are viewed by persons involved with the Program.

The council biennially submits a written report to the Congress and the President with recommendations for administrative and legislative changes. Advisory Council meetings were held in June 1977; February 1978; June 1978; February 1979; May 1979; and September 1979. Prior to each meeting a notice was published in the Federal Register announcing the dates of each meeting and advising that the meetings were open to the public. At these meetings the nutritional needs of the target population and the specific WIC food packages were discussed.

Public Hearings. In June 1977 public hearings were held in seven cities to consider comments regarding possible legislative and regulatory changes for the WIC Program. The hearings were held to solicit public testimony concerning the future structure and administration of the Program. The Washington Supplemental Food Programs Division, the Regional Administrators and their staffs, and the Information Division worked together to ensure that all interested parties were aware of the hearings and were encouraged to attend and testify. The Supplemental Food Programs Division published a notice in the Federal Register and worked with the Information Division to produce a public release, posters, and other forms of communication to bring media attention to the hearings. In addition, the supplemental Food Programs Division sent over 750 invitations to individuals as well as to every Governor, the House Education and Labor Committee, the Senate Select Committee on Nutrition, all members of the Advisory Council and Advisory Committee on Nutrition Evaluation, advocacy groups, grass roots organizations, industry representatives and professional groups. Regional Administrators wrote to all State Chief Health Officers and to all State WIC Coordinators. All individuals who desired to testify were allowed to do so. Time was allowed at the end of each speaker's testimony for questions from the floor. Public testimony on the food package covered the addition of new food items, the sugar levels of WIC cereal, the variety of cereals available, and the allowance of non-iron fortified infant formula.

Advisory Panel Meeting. The Department convened a Food Package Avisory Panel in October 1978 to review the current WIC Food packages and recommend changes. Members of the Advisory Panel included State health officials, representatives from the nutrition community and advocacy groups and a parent participant.

Public Comment. The preamble to the final WIC regulations published on August 26, 1977, included a discussion of the WIC authorized cereals. Specifically, the sugar and fortification levels of the cereals, the iron requirement for the cereals, and the issues of whole grains and artificial flavors and colors were

included. The Department requested the public to comment on these issues and as a result received 300 comments. The Department thoroughly analyzed all of the comments and considered them in developing this proposal. The comments are discussed below in the applicable sections of the preamble.

Other Meetings. As another means of obtaining public input, Supplemental Food Programs Division personnel attended several regional, State, and local meetings to hear and relay public opinions concerning possible changes in the food packages.

Although the above mentioned steps were taken to develop this proposal, the Department considers the 60 day comment period essential to the development of final regulations. The public is invited to submit written comments in favor of or in objection to the proposed regulations or to make recommendations for alternatives not considered in the proposed regulations. Comments should cite the appropriate section of the regulations, include a rationale and, whenever possible, provide supportive data. To be assured of consideration all comments should be received or postmarked by the specified deadline. Copies of all written comments received pursuant to this notice will be made available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.) in Room 4405, Auditors Building, 201 14th Street, S.W., Washington, D.C. 20250. The Department will give careful consideration to all comments before final regulations are published.

General Discussion

The current food packages are designed to provide foods containing the nutrients specified in Pub. L. 94–105, which are protein, iron, calcium, vitamin A and vitamin C. These nutrients were chosen based on studies which suggested that they were lacking in the diets of the WIC Program target population. The authorized supplemental foods are iron fortified infant formula, infant cereal, milk, cheese, eggs, iron-fortified breakfast cereal and fruit or vegetable juice which contains vitamin C.

As mentioned earlier, Pub. L. 95–627, which extends the WIC Program, defined supplemental foods as those foods containing nutrients determined by nutritional research to be lacking in the diets of the target population. The Department believes that research in this area has demonstrated that many of those nutrients specified in Pub. L. 94–105 may still be lacking in the diet of the WIC Program target population. Additionally, research has not provided evidence of changes in the dietary habits or economic situations of the target population sufficient to warrant changing the nutrients specified in the WIC food packages. Therefore, the nutrients protein, iron, calcium, vitamin A and vitamin C will continue to be provided by the supplemental foods authorized under the Program.

There has been considerable discussion about the meaning of the term "supplemental" as it relates to the WIC Program. A number of questions have been raised concerning the levels of nutrients the food packages should provide. The Department believes that the food packages should not be expected to meet all the nutritional needs of participants, but that the foods provided should be used in addition to a variety of other foods. However, the Department acknowledges that participants have limited incomes; therefore, it may be unrealistic to expect participants to purchase sufficient food to provide adequate amounts of all nutrients, particularly the specific nutrients provided in the WIC food packages. While nutrition education is a vital part of the Program and should emphasize the need for a varied diet, nutrition education cannot compensate for insufficient income. Therefore, the Department believes that the food packages should provide high percentages of the Recommended Dietary Allowances (RDA) for protein, iron, calcium, vitamin A and vitamin C.

The Department believes that research has indicated a need for increased amounts of folic acid and zinc in the diets of the WIC Program target population and a trend away from consumption of fiber containing foods in the general population. Therefore, folic acid, zinc and fiber were considered when developing the proposed food packages.

Dietary intake information suggests inadequate intakes of folic acid in relation to the RDA for the U.S. population as a whole, (*1*) and for pregnant adolescents in particular. (*2*) However, dietary intake data must be interpreted with caution because of the unavailability of reliable tables of the folic acid content of foods. Biochemical and clinical meaures may provide a more accurate profile of nutritional status with regard to folic acid. Information from the *Ten-State Nutrition Survey* on serum and red cell folate in various population groups in the U.S. indicates that non-Caucasians and low-income individuals in particular are at risk for folic acid deficiency. (*3*) Folic acid deficiency is difficult to diagnose clinically. However, megaloblastic anemia resulting from folic acid deficiency may be observed in 2.5–5.0 percent of pregnant women attending hospital clinics in developed countries. (*4*) Since megaloblastic anemia is the most advance state of prolonged folic acid deficiency, these findings are indicative of a higher incidence of marginal deficiency. Regardless of the shortcomings inherent in each of these direct assessments of the folic acid status of the WIC Program target population, it has been clearly demonstrated that pregnancy and lactation impose a significant nutritional stress on the mother which leads to an increased requirement for folic acid. (*5*)

Recent evidence suggests that marginal states of zinc nutrition exist in segments of the U.S. population. (*6*) The incidence in Americans of three zinc-responsive syndromes alerted researchers to the possibility of marginal zinc status in a significant portion of the population. Findings utilizing dietary analyses and estimated availability of zinc suggest that some infants, some pregnant women and some living on low-income diets have a marginal to deficient intake of zinc. (*7*) In a recent study, a group of apparently health, low-income preschool children in Denver were found to have a high incidence of suboptimal zinc nutrition with consequent zinc depletion. (*8*)

Compared to diets of other populations, the American diet may be low in fiber content. Despite an increasing interest in a possible protective role of fiber in various diseases prevalent in the U.S., the consumption of total crude fiber has not increased in the last twenty years. Crude fiber intake dropped by 28 percent from 6.8g/day in 1909 to 4.9g/day in 1957 to 1959 and has remained at that low level until the present. (*9*) Problems in the definition and analysis of fiber, and the lack of standards for recommended intakes, make it difficult to assess fiber intake in relation to the needs of the WIC Program target population.

The Department believes that sources of zinc, folic acid and fiber should also be provided by the food packages. However, considerations of cost and therefore of the potential number of persons served through the Program, and administrative feasibility prevented the inclusion of additional foods high in zinc and folic acid. Therefore, the Department is proposing to include foods that contribute to dietary zinc and folic acid intake, but at a level lower than the other specified nutrients. The addition of dried beans or peas or peanut butter makes a contribution to

the zinc level of the food packages for pregnant and breastfeeding women and children. Orange juice is an excellent source of folic acid and may be selected as the juice component by all women, children and infants 6–12 months of age. The Department is requesting comments on the possible inclusion of whole wheat bread, which contains fiber, in the packages for pregnant and breastfeeding women and children.

Because of associations that have been made between the overconsumption of sugar, fat, and salt and certain public health problems, Congress has expressed the desire that the sugar, fat, and salt content of the foods prescribed in the WIC food packages be appropriate. The Department is proposing to moderate sugar levels by establishing a maximum sugar content for authorized cereals. The sugar content of the proposed food packages is discussed in detail in the section of the preamble that pertains to cereals.

Consideration has also been given to the fat and the salt content of the food packages. Recommendations for the reduction of fat and salt in the diet have been made for the general population and the Department recommends that nutrition education efforts in the WIC Program stress the importance of consuming appropriate amounts of fat and salt. The levels of fat contained in the WIC food packages will vary considerably depending on the participant's choice of foods. For example, if the participant chooses foods that are highest in fat from among all the foods offered for pregnant and breastfeeding women, approximately 59 percent of the calories provided by the package would come from fat. However, if low fat foods, such as skim milk, were chosen, the package would provide only about 11 percent of the calories from fat. Therefore, there is a wide range in the fat as percent of calories in the food packages. The Department acknowledges that the upper end of this range may be high. However, it is important to recognize that the food package is a supplement to the diet. Therefore, the percentage of fat in the food package is not representative of the percentage of fat in the total diet. In fact, the food packages can be expected to provide a greater percentage of fat because a large proportion of the calories in the food packages are derived from foods with a potentially high fat content, such as milk and cheese, which are included because they also provide high quality protein and calcium, nutrients that are needed by the target population. It is expected that with nutrition education participants will not select foods from the food packages which provide the highest percent of calories from fat. Furthermore, it is expected that the other foods in the participants' diets will not provide such a large proportion of calories from fat. Therefore, the percentage of fat in the total diet, even for those who select foods with relatively higher fat contents, will be less than 35 percent, the level recommended by the American Heart Association and National Academy of Sciences. (*10*) The Department also recognizes that individuals have different dietary needs. The design of the food packages allows for individual tailoring so that the levels of fat in the packages can be controlled.

A wide range also applies to sodium values. The food package for children could provide from 438 to 2241 mg. of sodium per day and the food package for pregnant and breastfeeding women could provide from 502 to 2525 mg. of sodium per day. The Estimated Safe and Adequate Daily Dietary Intake of sodium, determined by the Food and Nutrition Board of the National Academy of Sciences, is 325–975 mg. for children 1–3 years of age and 450–1350 mg. for children 4–6 years of age. The Food and Nutrition Board does not specify Estimated Safe and Adequate Daily Intakes of sodium for pregnant and Breastfeeding women. However, the Estimated Safe and Adequate Daily Dietary Intake of sodium is 900 mg.–2700 mg. for adolescents and 1100 mg.–3300 mg. for adults. (*11*)

The lower value of the sodium range for the children's food package lies well within the range determined by the Food and Nutrition Board for children 1–3 years of age, and below the minimum intake for children 4–6 years of age. The Department acknowledges that the upper value of the sodium range for the children's food package may be high. However, over 75 percent of the sodium for this calculation was obtained from the use of a high sodium cheese for the milk component of the package. Similarly, when low sodium foods are chosen, the milk component, whole fluid milk, contributes over 85 percent of the total sodium in the package. The Department believes that the contribution of high quality protein and calcium made by milk and cheese justifies their inclusion in the children's food package despite their sodium levels. The sodium levels of the food package for pregnant and breastfeeding women are comparatively lower. The upper value of the range falls within the Food and Nutrition Board guidelines. Milk and cheese are also the major sodium contributors in this package and the same rationale for their inclusion applies.

In designing the current food package, the Department grouped participant populations which consume the same general categories of foods with the intent that a competent professional authority at the local agency would tailor the food packages to meet the nutritional needs of individual participants, and language to that effect was included in the regulations. Three food packages are currently specified for participants; one for infants, one for women and children and one for children with special dietary needs. However, available information, including a recent GAO report, indicates that food packages frequently are not tailored. (*12*) Lack of adjustment of the packages has resulted in criticism that the Program promotes overfeeding and encourages waste. The regulation on food packages set forth in this proposal alters this pattern.

This proposal delineates additional food packages in an effort to respond to criticism that the current three food packages provide too much food in relation to the nutritional needs of certain categories of participants. The proposed packages still provide considerable flexibility and the Department continues to encourage the competent professional authority to tailor the food packages to suit individuals' nutritional needs.

The Department is proposing seven different food packages rather than the current three. These food packages are designed to more accurately reflect infants' nutritional and developmental needs and pediatricians' corresponding feeding recommendations, to reflect the additional nutritional requirements of pregnant and breastfeeding women, and to correspond more closely to the recommended eating patterns for preschool children. The food packages are defined for categories of participants as follows:

1. Infants 0 to 2–4 months.
2. Infants 2–4 to 6 months.
3. Infants 6 to 12 months.
4. Children 1 to 5 years.
5. Children 1 to 5 years with special dietary needs.
6. Pregnant and breastfeeding women.
7. Non-breastfeeding postpartum women.

Infant Packages

This proposal contains a number of changes in the infant food package. There are three food packages proposed for infants which provide a general timetable for the introduction of authorized foods into the infants' diets.

Infant Formula. The Department has received many comments from health professionals and participants requesting the authorization of non-iron-fortified infant formula for infants who do not appear to be able to tolerate iron-fortified infant formula. The Department has thoroughly considered these requests and is concerned about the impact allowing non-iron-fortified infant formula would have on the WIC Program. Iron deficiency is one of the most prevalent nutritional problems of infants and young children in the U.S. Although infants are born with iron stores accumlated in utero, which are protective during the first few months of life, inadequate intake or iron during infancy may lead to the depletion of these stores and iron deficiency.

Intolerance to iron-fortified infant formula is a controversial issue. Although some physicians are opposed to the use of iron-fortified formula because of the belief that it causes fussiness, colic, spitting up, diarrhea or constipation, other physicians use iron-fortified formula regularly and consider such manifestations uncommon. (*13*) The Department is concerned that if a physician believes an infant manifests signs of intolerance to iron-fortified infant formula and places the infant on a non-iron-fortified infant formula, the infant will not be able to receive any infant formula through the WIC Program unless non-iron-fortifed infant formula is authorized. The Food Package Advisory Panel also expressed this concern in making its recommendation to allow non-iron-fortified infant formula when it is prescribed by a physician and concurrence is received from a State health official. However, because of the controversy concerning intolerance to iron-fortified infant formula, the Department believes additional public input is needed to make a decision. Therefore, the Department requests comments from health professionals on whether non-iron-fortified infant formula should be authorized for use in the WIC Program. Comments will be used in making a final decision which will be published in the final regulation.

In order to better meet the needs of some infants and some children with special dietary needs who consume greater quantities of the infant formula than currently authorized, the Department is proposing that an additional 52 ounces of concentrated liquid infant formula (or its equivalent in powder or ready-to-feed as set forth in the proposal) be allowed in the three infant food packages and the food package for children with special dietary needs when a physician determines and documents the need for the additional formula. The authorization of additional infant formula should be of assistance when concentrated liquid infant formulas packaged in 14 ounce cans are used. Currently twenty-eight 14 ounce cans of concentrated liquid infant formula can be provided to participants. With the authorization of the additional formula, participants will be able to receive thirty-two 14 ounce cans when a physician determines and documents the need for the additional formula.

Cereal. Current recommendations for infant feeding practices recommend the provision of only breast milk or infant formula to infants during the first months of life. In designing the proposed food packages, the Department gave consideration to these recommendations and the recommendation of the Food Package Advisory Panel to delay the introduction of solid foods to 2–4 months of age. The use of an age range would allow flexibility to accommodate individual differences in growth and development. Therefore, the Department proposes that infant cereal not be provided in the infant food packages until 2–4 months of age.

The Department has received many requests to allow older infants to receive adult cereals. The reason most often stated is that older infants prefer the texture of adult cereals and often refuse to eat the infant cereals. The Food Package Advisory Panel supported this request. In reviewing this option, the Department consulted several pediatricians who raised serious concerns about such a change. The critical time for the development of anemia in infancy is after body stores of iron built up in utero are depleted, which generally occurs after 4–6 months of life in term infants. (*14*) The infant must, therefore, rely on a good source of dietary iron. The cereal issue would be a lesser concern if infants were still receiving iron-fortified infant formula. However, there are data to indicate that a significant number of infants are no longer fed infant formula by 9 months of age but are fed milk. (*15*) The iron used in infant cereals is electrolytically reduced iron of small particle size. (*16*) Adult cereals however, may vary as to the iron compound used for fortification, and, therefore, in the bioavailability of that iron. (See the section of the preamble of Bioavailability of Iron.) In addition, infant cereals contain more iron than that available in cereal fortified at 25 percent of the USRDA for adults and children four or more years of age which is proposed for inclusion in the packages of women and children who do not exhibit signs of iron deficiency. Therefore, in order to maintain an infant package providing an optimum level of specified nutrients, the Department is proposing that the current requirement that only infant cereals be provided to infants be maintained.

Juice. Current regulations authorize juice for all infants 0 to 12 months of age. This regulation proposes that juice not be authorized for infants until 6 months of age. This proposal was based on consideration of a joint recommendation by the American Academy of Pediatrics and American Academy of Pediodontics which discourages the feeding of juice from a bottle rather than a cup, (*17*) and on consideration of the vitamin C content of the food packages. Infant formula contains considerable amounts of vitamin C, whereas milk contains only minimal amounts of vitamin C. Since milk may be substituted for infant formula beginning at 6 months of age, the Department believes that a source of vitamin C should be included in the food package for infants beginning at 6 months of age. The Food Package Advisory Panel concurred with the Department, and to minimize the cost of the food package, further recommended that the Department authorize adult juices for infants and allow infant juices only when the need is documented by a compentent professional authority. The Department agrees with this recommendation and has incorporated it into the proposed regulation.

Women and Children

Currently there is one food package for pregnant, breastfeeding and non-breastfeeding postpartum women and children participating in the WIC Program. In developing this food package, the Department intended that competent professional authorities at local agencies would tailor the food packages according to individual needs. However, the Department believes that little tailoring is taking place. Because of the limited funds available, the Department believes that it is necessary to ensure that the participants with the greatest needs who may benefit most by consuming the supplemental foods receive the greatest quantity and variety of foods. Therefore, the Department is proposing four different food packages, one for pregnant and breastfeeding women, one for non-breastfeeding postpartum women, one for children and one for children with special dietary needs.

Many recommendations have been made in recent years to encourage women to breastfeed their infants. These recommendations have been

made on the basis of nutritional and immunological properties of breastmilk as well as other factors. The American Academy of Pediatrics recommends that full-term newborn infants be breastfed, except if there are specific contraindications. (*18*) In an effort to put recommendations for breastfeeding into practice and because the nutritional needs of pregnant and breastfeeding women are greater than the nutritional needs of non-breastfeeding postpartum women, the Department is proposing an enhanced food package for pregnant and breastfeeding women but not for non-breastfeeding postpartum women.

The proposed food package for pregnant and breastfeeding women provides the currently authorized foods in the currently authorized quantities with the exception of eggs, (for which the quantity is reduced for administrative reasons) plus dried beans or peas or peanut butter. The mature dried beans or peas or peanut butter will provide an additional source of nutrients and add variety to the food package. Although the proposed food package for non-breastfeeding postpartum women provides the currently authorized foods, the maximum authorized quantities of milk, eggs and juice are less than currently authorized. Additionally, mature dried beans or peas or peanut butter are not provided in the food package for non-breastfeeding postpartum women. The proposed food package for children also provides the currently authorized foods although the quanities of milk and eggs are less than currently authorized. Mature dried beans or peas or peanut butter are also provided in the food package for children as an additional source of nutrients and for variety. The proposed food package for children with special dietary needs is the same as the current food package for these children.

The food packages for pregnant and breastfeeding women, non-breastfeeding postpartum women, children and children with special dietary needs ar discussed by food item.

Eggs: The number of eggs currently authorized in the food package for women and children, 2½ dozen, has not been received well by many local agencies, primarily due to the administrative problem of purchasing one-half dozen eggs. Some grocery stores have a store-wide policy prohibiting the breaking of egg cartons. To alleviate this problem, the Department has allowed local agencies to issue 2 dozen eggs one month and 3 dozen eggs the next month when necessary. However, this monthly variation has caused some problems with issuance records and the automated printing of vouchers. To alleviate these problems the Food Package Advisory Panel recommended that 2 dozen eggs be provided in the food packages. The Department concurred with this recommendation and is proposing that 2 dozen eggs be provided in the food packages for pregnant and breastfeeding women, non-breastfeeding postpartum women and children.

Milk. The Advisory Panel believed that the amount of milk currently provided for children, 28 quarts, is excessive. The amount of milk that children should drink cannot be stated with convincing accuracy. This is partly because it depends to a large extent on economic factors and the availability of other foods. However, when a mixed diet is available in adequate quantities, milk consumption should probably not exceed one-third of the total daily calorie intake after the latter part of the first year of life (2 or 3 glasses a day).(*19*) If the major portion of a child's caloric needs are provided from a single food source, such as milk, other foods including those rich in iron may be excluded from the diet. Therefore, the Department is proposing that the amount of milk authorized for children be reduced to 24 quarts per month. This reduction will still provide more than 3 glasses of milk per day for those children who may need it. Additionally, the Department is proposing a reduction in the amount of milk authorized for non-breastfeeding women because they do not need as much milk as pregnant and breastfeeding women.

The Department has received a number of requests from Program participants and industry for the inclusion of goat milk as a substitute for cow milk in the food packages. The basis for these requests has been that some individuals who cannot tolerate cow milk can do quite well on goat milk. However, the Department is concerned because much of the commercially available goat milk is not pasteurized and most of it is not fortified with vitamin D. Therefore, in order to allow for the provision of goat milk it would be necessary to make an exception to the current requirements that milk provided to participants be pasteurized and fortified with vitamin D. Additionally, goat milk is a relatively poor source of folacin. Because milk is the major source of calories for infants, experts in the field of nutrition recommend that infants fed goat milk receive a folacin supplement. [*20*] As there is no assurance that infants fed goat milk would receive supplemental folacin, the Department is concerned about the possibility that infants receiving goat milk may develop a folacin deficiency which may result in megaloblastic anemia. Additionally, the cost of goat milk is more than twice the cost of cow milk.

Since a number of infant formulas designed for individuals with special needs are provided for infant and children participants, the Department questions the need for allowing goat milk. Therefore, the Department requests that comments be submitted on the need for goat milk for nutritional reasons why special formulas are not a satisfactory alternative for infants and children who cannot tolerate cow milk, the demand for goat milk for non-nutritional reasons, the availability of goat milk and, if goat milk is available, whether it is pasteurized or fortified with vitamin D.

These comments will be considered in making a decision on whether to allow for the provision of goat milk in the WIC food packages.

Cheese. Some participants have requested that additional cheeses be provided in the food packages. Brick cheese and Spanish White cheese have been specifically requested. The Food Package Advisory Panel recommended that the choices for cheese be expanded to include these cheeses if they are comparable to currently authorized cheeses in nutrient content and cost. Since the nutrient content of Spanish White Cheese varies from region to region, this cheese has not been added to the food packages. However, brick cheese is comparable in nutrient content to currently authorized cheeses and has been added to the list. After considering the nutrient content of other domestic cheeses available, the Department has decided to also add the following domestic cheeses: Edam, Gouda, Muenster, Provolone and Mozzarella part skim or whole.

Peanut Butter and Mature Dried Beans and Peas. In the past, the Department has received comments requesting a greater variety of foods in the food package. Mature dried beans and peas and peanut butter have been frequently requested. Because the Department has proposed a reduction in the number of eggs in the food packages for pregnant and breastfeeding women and a reduction in the number of eggs and quantity of milk in the food package for children, it is felt that an additional food, preferably a protein source, should be included in these food packages. Therefore, the Department proposes to add 1 pound of mature dry beans or peas or 18 ounces of peanut butter to the food packages for children and pregnant

and breastfeeding women. These foods are readily acceptable to most of the target population, will allow for cultural differences in diet patterns and will complement the use of other foods. Furthermore, mature dried beans and peas provide a source of zinc in American diets. Although there are other foods that contain zinc in higher concentrations, such as meat, administrative factors as well as cost, prohibit their inclusion in the food package.

Juice. The proposed regulations maintain the current requirements for authorized juices. The quantities of juice provided in the food packages are not changed except in the food package for non-breastfeeding postpartum women where there is a reduction in the quantity of juice provided. The sizes and packaging of juices make it extremely difficult to designate a maximum amount of juice which accommodates both single strength and frozen concentrated types. The Department considered designating a separate maximum amount for each type of juice. However, this would not allow participants to purchase a combination of types of juices. Therefore, one quantity is authorized for all types of juices. The Department is aware that participants receiving frozen concentrated juice receive slightly less juice than if single strength juice were used. However, because a maximum amount of juice is authorized, it does not mean that the maximum amount must be given to each participant each month. Further, over 100 percent of the RDA for vitamin C is provided in all food packages, even when slightly less juice is issued.

Additional Foods. Previously, the Department had not considered providing an enhanced food package for pregnant and breastfeeding women and children, believing that the food packages provided sufficient supplemental foods for these categories of participants. However, the Department is concerned about the adequacy of the current food packages in terms of some micronutrients and fiber supplied. Therefore, the Department gave consideration to additional food items which could be included in the food packages. Principally, the Department considered the addition of vegetables or whole grain breads. These food items were viewed in terms of nutritional contributions, nutrition education goals, cultural eating patterns, cost and administrative feasibility.

Vegetables are important dietary sources of vitamins A and C and fiber. However, individual vegetables differ widely in how much of these vitamins and fiber they provide. Dark green and deep yellow vegetables are good sources of vitamin A. Most dark green vegetables are reliable sources of vitamin C, if not overcooked, and are valued for riboflavin, folacin, iron and magnesium. Additionally, certain greens, including collards, kale, mustard, turnip and dandelion greens, provide calcium. The amount of fiber in vegetables depends on the cellulose, hemicellulose and lignin content of the vegetables.

Whole grains are important sources of B vitamins and iron. They also provide protein and contribute magnesium, folic acid, zinc and fiber to the diet. Although enriched white bread contains appropriate levels of many B vitamins, it generally does not contain the fiber and trace minerals that are found in whole grain breads. Therefore, it is beneficial to include some less refined or whole grain products in the diet.

Providing either vegetables or whole grain breads would be consistent with the principles of nutrition education since an additional food item would further the concepts that: (1) no one food should provide all the needed nutrients, and (2) a well balanced diet chosen from a variety of conventional foods is the preferred source of adequate nutrition. Exposure of participants to vegetables or whole grain bread in conjunction with nutrition education would be beneficial since participants may learn to make them a regular part of their diet.

In the decision as to whether vegetables or bread should be included in the package, administrative feasibility, nutrient content, cost and participant acceptability became important considerations. Following the second National WIC Symposium held by the Children's Foundation, the Department received numerous communications from nutritionists and administrators concerning the administrative difficulty of providing vegetables in the food package. Some of the difficulties brought to the Department's attention were that listing specific vegetables on vouchers would be cumbersome, monitoring vendors to ensure only authorized vegetables are provided to participants would be difficult and, in areas where dairies are used for home delivery, it may not be possible to provide vegetables.

The Department was also concerned that there would be an acceptability problem with vegetables. Many of the vegetables which contain high concentrations of the specified nutrients are the least popular. Although a major purpose of including vegetables would be to encourage their consumption, because of the relatively short time for many participants in the Program, especially pregnant women, the use of resources may be better placed in foods that have a higher probability of being consumed. Another concern was the level of salt in some canned vegetables. However, the Department would like further input from the public on this issue, and therefore, requests comments on the provision of vegetables to pregnant and breastfeeding women and children, the types of vegetables which should be provided and the quantity.

The Department gave further consideration to adding whole grain breads to the food packages for pregnant and breastfeeding women and children. However, for most breads considered by the public to be whole grain, there is no assurance that this is actually the case.

Standards of identity are definitions of foods developed by the Food and Drug Administration. They define what a food product is, its name and the ingredients which must be used, as well as optional ingredients and what must be declared on the label. There are standards of identity for whole wheat and cracked wheat flours which ensure that the proportions of the natural constituents of the wheat, other than moisture, remain unaltered. Additionally, there is a standard of identity for whole wheat bread which ensures that the only flours used in whole wheat breads are whole wheat flours. However, there is no standard of identity for cracked wheat bread. A review of ingredients statements on bread labels revealed that some breads labeled cracked wheat bread contain wheat flour (not cracked wheat) as the primary ingredient.

The situation is more complex in relation to rye bread and pumpernickel bread. Ingredient statements on rye breads and pumpernickel breads include rye flour and pumpernickel flour, respectively. Both rye flour and pumpernickel flour are made from rye grain. However, there are not standards of identity for rye flour or pumpernickel flour which establish the proportions of natural constituents in the flour. If the flour does include the bran and germ, the proportions of these constituents may vary. Furthermore, rye bread and pumpernickel bread are normally blends of wheat flour and rye flour or pumpernickel flour.

The rationale for considering including whole grain breads in the food packages for pregnant and breastfeeding women and children was to provide an additional source of fiber and trace

minerals provided by whole grains in the food packages. However, there is no assurance that cracked wheat, rye and pumpernickel breads contain substantial quantities of the bran or germ of the grain, and therefore, fiber and trace minerals. Furthermore, there is no assurance of uniformity among products labeled cracked wheat, rye or pumpernickel bread. Therefore, the Department is not considering proposing including cracked wheat, rye and pumpernickel bread in the food packages for pregnant and breastfeeding women and children. Because the standard of identity for whole wheat bread ensures that breads labeled whole wheat are whole grain breads, the Department is considering adding 2 pounds of whole wheat bread to the food packages for pregnant and breastfeeding women and children. However, the Department is concerned about the acceptability of whole wheat bread by participants and possible problems with the availability of whole wheat bread in rural areas. Therefore, the Department requests comments on the inclusion of 2 pounds of whole wheat bread in the food packages for pregnant and breastfeeding women and children especially in relation to acceptability and availability. These comments will be used in making a decision on whether to include whole wheat bread in these food packages.

Cereals. The cereals authorized for use in the WIC Program have always been a source for comment. After interim regulations were published in January 1976 there were requests from the cereal industry and the public to reduce the iron requirements to allow a larger variety of cereals to be used in the WIC Program. The establishment of a limitation for sugar was also requested by the public during several comment periods. While the Department made no changes at that time, it allowed State agencies to exclude any cereal they found unacceptable for use in the Program.

Although the proposed rules published in February 1977 did not contain any changes in the cereal requirement, again there were comments requesting a lowering of the iron requirement and establishment of a sugar limitation. In June 1977 public hearings were held by the Food and Nutrition Service to obtain comments regarding possible legislative changes in the WIC Program. During those hearings, 114 commenters representing a variety of interests presented oral or written testimony on various aspects of the food packages. These comments centered most often on the authorized cereals and their nutrients. A petition sent to the Department in June 1977 by a number of nutritionists, requested various changes in the cereal requirements related to the iron and sugar levels. FNS officials met with representations from this group to discuss their concerns and the action the Department would take. A decision was made to include in the preamble of the final regulations a discussion of possible changes in the cereal requirements as issues for public comment.

Therefore, in the final WIC Program Regulations published in the Federal Register on August 26, 1977, the Department requested comments concerning a number of possible changes in the requirements for cereals authorized in the WIC Program. These possible changes included reducing the iron requirement, establishing a maximum sugar level, eliminating cereals which provide 100 percent of the USRDA's for certain nutrients, allowing whole grain cereals regardless of iron content, and excluding cereals with artificial flavors and colors. Due to the complexity of this issue and the Department's desire to obtain the maximum possible advice, the Food Package Advisory Panel also discussed this issue and presented a number of recommendations to the Department.

Many factors were considered in the evaluation of the appropriateness of the requirements for authorized cereals. Possible changes had to be considered in the context of the purpose of the WIC Program and its supplemental nature. The Food Package Advisory Panel strongly recommended that all items included in the food packages be evaluated not only in terms of nutritional content as related to participants' needs, but also in view of the Program's educational objectives and economic ramifications. The Department used these criteria in formulating the requirements for cereals being proposed.

The Department considered the following major goals in this decision process:

1. To provide an economical and acceptable source of iron;
2. To meet the legislative intent of ensuring an appropriate level of sugar;
3. To ensure that the cereals are compatible with the nutrition education messages of the Program;
4. To increase the variety of cereals thereby increasing participant consumption of cereals.

The issues concerning the cereals are discussed below in relation to these goals.

Iron. Iron deficiency is one of the most prevalent nutritional problems in the WIC Program target population. In order to provide an acceptable and economical source of dietary iron, cereal is included in the food packages for women and children. Currently, cereals must contain a minimum of 45 percent of the USRDA for iron in order to be authorized. This requirement was established to ensure that the cereals provided to WIC Program participants would contain considerable quantities of iron and to ensure a variety of cereals could be offered to allow for differences in preferences among participants. However, the Department has received numerous requests from State agencies, nutritionists and participants to lower the iron requirement for cereals because the current requirement does not allow for a large enough variety of cereals from which participants may choose. The Department is concerned about these requests since this lack of variety in cereals has a potentially adverse affect on consumption of cereals by participants.

In order to gain further insight into the potential problem, in August 1977, the Department requested comments on whether it should reduce the iron requirement for cereals from 45 percent to 25 percent of the USRDA for iron. Of the 150 comments received, 81 percent supported a reduction in the iron requirement. Many of these commenters stated that the cereals currently authorized are not readily accepted by participants and that iron consumption could even be increased with a reduced iron requirement, since the more popular cereals that would be allowed would be more likely to be consumed. Those opposed to the reduction in the iron requirement stated that it would be contrary to the goal of the WIC Program which is to provide foods which are good sources of nutrients lacking in the diets of the target population.

The Department decided that further investigation of the issues raised by commenters would be necessary to make an informed decision on whether to lower the iron requirement for cereals. Therefore, the Department compiled information on the numbers of cereals which would be authorized at 45 percent and 25 percent of the USRDA for iron, the acceptability of the currently authorized cereals, the prevalence of iron deficiency in the WIC Program target population and the impact reducing the iron requirement for cereals would have on the iron provided by the food packages. The information the Department compiled as a result of this effort is discussed in the following paragraphs.

The Department examined approximately 100 cereals that are

currently available on the commercial market to determine the number of cereals which contain a minimum of 45 percent and 25 percent of the USRDA for iron. Of these, 20 contained a minimum of 45 percent of the USRDA for iron and 52 contained a minimum of 25 percent of the USRDA for iron. However, some of the cereals examined are not available in all areas of the country and State agencies frequently limit the number of cereals available by excluding highly sugared cereals from the food package. Therefore, the number of cereals authorized for participants to choose from can be much less than these figures imply. Data abailable from 29 State agencies indicate that with the current requirement that cereals contain a minimum of 45 percent of the USRDA for iron, the average number of available cereals is 6 for those restricting sugar levels and 9 for those not restricting sugar levels.

To assess the acceptability of currently authorized cereals, the Department reviewed data obtained from a major study of the WIC Program, redemption rates of cereal vouchers, surveys and interviews with participants.

In 1976, the Urban Institute performed a study to evaluate the WIC Program delivery systems. As part of this study participants were interviewed to obtain information on participant satisfaction with the foods in the WIC packages. These interviews revealed participant dissatisfaction with WIC cereals. According to the report, 23 percent of the participants surveyed requested that cereal be dropped from the food package or that the amount provided be decreased. (21)

Data from a State agency on the redemption rates of cereal vouchers in March, 1979 indicate that 18 percent of these vouchers were not issued or were voided at the local agency while only 2.4 percent of other vouchers were not issued. Reasons for this included: dislike of the cereals, cereals from previous months were not used or failure to pick up vouchers. Of the cereal vouchers issued, 10 percent were not redeemed, while the nonredemption rate for all foods was 4.5 percent. Therefore, 28 percent of the WIC vouchers for cereals in this particular State agency were not being used.

Small scale surveys conducted by State or local agencies indicate dissatisfaction with the WIC cereals. A survey conducted in Tennessee in 1979 showed that 10 percent of the participants do not use the WIC cereals. Another small survey from Rhode Island revealed that 13 percent of the WIC child participants do not eat the cereals provided.

Interviews of participants at local agencies in California, Washington, Oregon, Arizona and Nevada performed by the Western Regional Office since January, 1979 also indicate problems with the acceptability of cereals currently authorized under the WIC Program. When asked about the food package, participants criticized the types of cereals provided and expressed a need for a wider selection of cereals.

Although the WIC cereals need not be those most favored by participants, acceptability is important because there is a small number of cereals actually available for participants to choose from and these cereals will probably be consumed for at least six consecutive months. The above data indicate that the acceptability of the cereals is not as high as it should be to ensure that participants receive maximum benefits from the WIC food packages. While participants may be making independent purchases of other cereals or foods, the Department has no evidence which shows that alternate sources of iron are being consumed.

Several national studies and surveys have shown that iron deficiency is a major nutritional problem among the WIC Program target population. The *Ten State Nutrition Survey* reported a high prevalence of low hemoglobin levels, particularly among the lowest income groups. Low hemoglobin values were believed to be due primarily to iron deficiency because of the age distribution and low iron consumption indicated by dietary information. (22) The study *Nutritional Status of Preschool Children in the United States (Preschool Nutrition Survey)* found evidence of low hemoglobin levels among preschool children of lower socioeconomic status. (23) Results of the *Health and Nutrition Examination Survey* also indicate that iron deficiency is a problem among the WIC Program target population. The prevalence of low hemoglobin values in preschool children and women was generally higher for the poverty group than for the nonpoverty group. Dietary consumption data revealed lower mean iron intakes among black preschool children and women in the poverty group than among other ethnic/income groups. This was due to consumption of a smaller amount of food rather than a lower iron content of the foods consumed. (24)

Studies which have been performed to evaluate the effectiveness of the WIC Program indicate improvement in iron consumption with participation in the Program. The University of North Carolina performed a medical evaluation of the WIC Program at 19 local agencies in 14 States. The investigators concluded that there was a consistent increase in hemoglobin levels and a reduction in the prevalence of anemia in infant and children participants. Additionally, an increase in mean hemoglobin concentration and a reduction in the anemia rate was reported for pregnant and postpartum women. (25) A study performed on WIC participants in Massachusetts showed similar results. (26) A number of State and local agencies have also reported decreases in the prevalence of anemia in the target population after participation in the WIC Program.

At the request of the Department, the Center for Disease Control (CDC) used data from its Nutrition Surveillance System to estimate some nutritional effects of the WIC Program. On the basis of this data CDC reported that children entering the WIC Program have a high prevalence of anemia, presumably caused by iron deficiency, and that children enrolled in the Program for 1 year experience considerable improvement in their hemoglobin and hematocrit values. (27)

Currently, the total food package for women and children provides approximately 12 mg. of iron per day. With the addition of dried beans or peas or peanut butter and cereals which contain 25 percent of the USRDA for iron, the food packages for pregnant and breastfeeding women and children would provide approximately 8 mg. of iron per day, which is 53 percent of the RDA for iron for children 1–3 years of age, 80 percent of the RDA for children age 4 and 27 percent of the RDA for iron for pregnant and breastfeeding women.*

The cereals providing 45 percent or more of the USRDA for iron would still be available if the minimum requirement for iron were lowered to 25 percent of the USRDA. Therefore, these calculated

* The RDAs for iron for pregnant and breastfeeding women in the 1974 edition of the *Recommended Dietary Allowances* are 18 + and 18 mg. of iron per day, respectively. The 1979 edition of the *Recommended Dietary Allowances* does not specify a dietary requirement for iron. The Food and Nutrition Board states that, "The increased requirement (for iron) during pregnancy cannot be met by the iron content of habitual American diets nor by the existing iron stores of many women; therefore the use of 30–60 mg. of supplemental iron is recommended. Iron needs during lactation are not substantially different from those of non-pregnant women, but continued supplementation of the mother for 2–3 months after parturition is advisable in order to replenish stores depleted by pregnancy." (28) Therefore, 30 mg. per day was used as the RDA for iron in the calculations for pregnant and breastfeeding women. If 18 mg. of iron per day is used as the RDA for pregnant and breastfeeding women the proposed food package would provide 44 percent of the RDA for iron for pregnant and breastfeeding women.

iron levels represent a minimum level in the package. Participants selecting the more highly fortified cereal would obtain a higher percentage of their requirement for iron.

Concern about lowering the iron requirement for authorized cereals and therefore lowering the iron content of the total food packages has centered on the beneficial effect WIC has been observed to have on reducing the prevalence of anemia among pregnant women and children. The Department does not want to jeopardize the success of the WIC Program in positively affecting anemia rates. However, the Department is concerned about the low acceptability of currently authorized cereals by particpants.

Participants in the WIC Program are certified as being at nutritional risk for a number of reasons; iron deficiency is only one nutritional risk criteria used in certification. The Department believes that it would be acceptable to allow particpants who are not iron deficient to receive cereals which contain 25 percent of the USRDA for iron. Although the Department does not have data to indicate that these participants are consuming foods high in iron, it would be reasonable to assume that participants who do not exhibit signs of iron deficiency either have sufficient iron stores to protect against iron deficiency or are obtaining a sufficient amount of iron through their diets or in a medicinal form. Therefore, the Department believes that for participants who are not iron deficient, acceptability of cereals outweighs the need for cereals which contain a large amount of iron and is proposing that participants who at certification do not exhibit signs of iron deficiency be able to receive cereals which contain a minimum of 25 percent of the USRDA for iron.

Acceptability of cereals is also important for participants who are iron deficient. However, the Department believes that more concrete evidence of low acceptability of currently authorized cereals would be necessary to lower the iron requirement for cereals provided to participants who are iron deficient. Cereals are the primary source of iron in the food packages for women and children participants. Lowering the iron requirement for cereals provided to participants who are iron deficient may have a negative impact on the effectiveness of the WIC Program in reducing the prevalence of iron deficiency. Therefore, the Department is proposing that participants who at certification exhibit signs of iron deficiency be limited to receiving cereals which contain a minimum of 45 percent of the USRDA for iron. The Department recognizes that participants who exhibit signs of iron deficiency should be treated with medicinal iron supplements and this proposal does not intend to minimize the need for such supplementation. However, a survey has indicated that many clinics do not routinely prescribe medicinal iron supplements. (*29*) The Department believes that it is appropriately the role of the health community and not necessarily that of the USDA to provide such supplements. By maintaning the higher iron requirement in cereals for participants who exhibit signs of iron deficiency, the Department hopes to have some effect on the iron status of these participants. The Department's requirements for foods provided through the WIC Program are minimum requirements. State and local agencies can establish more stringent requirements if the desire. Therefore, State or local agencies can require that participants who do not exhibit signs of iron deficiency, but who are considered to be at risk, be restricted to receiving cereals fortified at a minimum of 45 percent of the USRDA for iron.

The final decision on the iron level in cereals will be a difficult one to make. The Department, therefore, requests comments from all interested parties, such as clinics, participants, and medical and nutritional experts, in order that the final decision made by the Department reflect the goals of the WIC Program and meet the needs of the participants.

Bioavailability of Iron

Since cereals provide the largest amount of iron in the WIC food package, the Department is concerned about the bioavailability of iron used to fortify cereals. Bioavailability of iron from foods is a complex subject. The bioavailability of iron used in fortification is influenced by many factors including the chemical form of the iron, particle size, interaction of the iron with other dietary components, chelation, the body's need for iron, processing and the digestibility of the food supplying the iron. (*30*) The same form of iron, when used in different cereals, may have different availabilities. Iron bioavailability is generally expressed as a relative biological value (RBV). Ferrous sulfate is used as the standard of comparison and assigned an RBV of 100. Some scientists suggest that the forms of iron used to fortify grain products be limited to those with RBVs' of 50 or greater. (*31*)

Communications between USDA nutritionists and industry representatives indicate that the forms of iron most commonly used to fortify breakfast cereals are ferric orthophosphate and reduced iron, including hydrogen reduced iron and electrolytically reduced iron. Ferric orthophosphate is generally considered to have poor availability. However, the bioavailability of ferric orthophosphate is affected by particle size and solubility, and ferric orthophosphate samples can differ widely within these parameters. When samples of ferric orthophosphate of small particle size and with good solubility have been used, fair bioavailability has been reported. The availability of reduced iron also varies. Properties of reduced iron that have been suggested to be important in determining its bioavailability include the method of manufacture, particle size, solubility, chemical impurities, surface area and age of the iron. Because the bioavailabilities of ferric orthophosphate and reduced iron each vary, the RBVs' for these forms of iron are expressed as ranges. The RBV for ferric orthophosphate has been reported to be 3 to 46, the RBV for hydrogen reduced iron has been reported to be 18 to 54 and the RBV for electrolytically reduced iron has been reported to be 45 to 76. (*32*)

Communications between USDA nutritionists and industry representatives have indicated that minimally available sources of iron have been removed from most cereals and the reduced iron used in at least some cereals is of small particle size. However, without exact specifications on the forms of iron used to fortify cereals, it is impossible to determine if the iron is poorly or moderately to well absorbed. The Food and Drug Administration is working on the standards for the forms of iron used in food fortification.

The Department is very concerned that the iron used to fortify some cereals may have poor availability. However, data which is currently available is not sufficient to substantiate poor availability, and is therefore not sufficient to warrant the removal of these cereals from the WIC food packages. The Department intends to pursue the issue of bioavailability of iron from cereals and requests that manufacturers of adult cereals and infant cereals submit information on specifications for iron used to fortify their products and submit data, where available, on iron bioavailability from their cereals. The Department will compile this information and identify needs. Once research needs have been

identified, the Department will perform research on the bioavailability of iron from cereals. If the results of this research show that the bioavailability of iron from some cereals is poor, the Department will give serious consideration to removing these cereals from the WIC food packages at that time.

Sugar. With the proposal to allow lower levels of iron fortification for some participants, the level of sugar in cereals becomes an extremely important consideration since many highly sweetened cereals would be authorized. When public comments were requested in August 1977, the Department received 230 comments on the exclusion of high sugar cereals from the food packages. Over 90 percent of the comments (208) were in support of the Department establishing a maiximum level of sugar for cereals authorized in the WIC Program. These comments were received from State agencies, local agencies, the general public, and interest groups. There were 22 comments received from State and local agencies and interest groups, including the Sugar Association and two cereal companies, opposing the establishment of a maximum level of sugar in cereals.

Commenters supporting the elimination of high sugar cereals from the WIC Program believe high sugar cereals may contribute to health problems such as dental caries and obesity. Commenters opposed to the elimination of high sugar cereals believe current research does not support the relationship between sugar consumption and health problems. Additionally, they believe that the elimination of high sugar cereals would reduce the number of cereals authorized and diminish popularity and acceptability of WIC cereals. The Food Package Advisory Panel, in considering this issue, recommended that a maximum level of sugar be set.

Several recent reports have emphasized the need for concern about the amount of sugar in the diet. The *Evaluation of the Health Aspects of Sucrose as a Food Ingredient,* prepared for HEW by the Federation of American Societies for Experimental Biology concluded that:

> Reasonable evidence exists that sucrose is a contributor to the formation of dental caries when used at the levels that are now current and in the manner now practiced. (*33*)

A symposium sponsored by the American Society for Clinical Nutrition entitled *Can Diseases of Over Consumption be Prevented by Dietary Changes?—A Critique of the Evidence* states that:

> Evidence is convincing that sucrose, especially when consumed frequently throughout the day, is the dietary component that is most conductive to (oral) bacterial infection and caries . . . While the frequency and pattern of diet consumption are powerful determinants of caries induction, the absolute amount and nature of the sugar consumed also is important.

This report concludes that:

> Reduction of frequency of sucrose consumption results in reduced dental caries without known risk. The benefits of reduction of consumption of other simple sugars and carbohydrate containing foods have been more difficult to establish. (*34*)

Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention states:

> (a) Cause of concern is the diet of a large proportion of today's children—containing considerably more fat and sugar than a reasonable diet should have.

It suggests that:

> Excessive intake of salt, sugar, and fats should be avoided . . . Sweets in the diet should be limited to prevent tooth decay.

The report summarizes its suggestions on good nutrition by stating among other things that:

> Americans would probably be healthier, as a whole, if they consumed * * * less sugar * * * (*35*)

Commenters supporting the elimination of high sugar cereals from the WIC Program believe that the provision of high sugar cereals is contrary to nutrition education prinicples and may lead to the development of unsound eating practices. The Food Package Advisory Panel and the Department agree that the nutrition education goals of the WIC Program support reducing the level of sugar in cereals.

In addition, highly sugared cereals are more expensive than cereals containing less sugar. As the sugar contents of cereals increases, the average cost of the products also increases. While consumers may opt to add their own table sugar to the cereals authorized by WIC Program, this is a conscious decision made by the consumer, and is a more economical way to buy sugar. Therefore, if highly sugared cereals are allowed, the food packages themselves are inconsistent with the goal of teaching participants economical food buying patterns.

The Department recoginzes that the juice in the food packages also contains sugar. However, the sugar in juice cannot be easily reduced since most sugar in juice is naturally occuring. Since much of the sugar in cereal is added, the percentage of sugar in cereal can be reduced.

The majority of commenters who recommended a maximum level of sugar for cereals authorized in the WIC Program recommended that this level be established at 15 or 20 percent. Percentage figures were most often used to express the recommended level of sugar because they are most easily understood, but for practical purposes they must be converted to correspond to the figures used in nutrition labeling so that information found on cereal packages can be used to identify acceptable cereals. The converted percentages for 15 and 20 percent are equal to 4.25 and 5.67 grams of sugar per ounce of cereal, or, rounded to whole numbers, 4 and 6 grams per ounce. The higher value of 6 grams of sugar per ounce of cereal is the same as that recommended by the Food Package Advisory Panel.

The Department collected information on the sugar content of cereals that are currently available on the market. There does not appear to be a clear cut-off point to differentiate low sugar cereals from high sugar cereals. With the current iron requirement of 45 percent and a 4 grams per ounce sugar limit, only 10 cereals would be authorized. Based on a 6 grams per ounce limit, 12 cereals would be authorized. With the proposed 25 percent iron requirement for some participants and a 4 grams per ounce sugar limit, 18 cereals would be authorized. Based on a 6 grams per ounce sugar limit, the list increases to 26 cereals. The Department has decided to propose a sugar limit of 6 grams per ounce of cereal which is the least restrictive limit recommended by the commenters and the same as that suggested by the Food Package Advisory Panel. When coupled with the proposed iron requirement of 25 percent of the USRDA for participants who at certification do not exhibit signs of iron deficiency, this less restrictive limit allows for a wider variety of cereals. It is proposed that the maximum level of sugar allowed in cereals authorized for use in the WIC Program be 6 grams per ounce of dry cereal. Sugar, as used in this proposal, means "sucrose and other sugars." This is the terminology industry uses to label cereals. Therefore, acceptable cereals should be easy to identify. The term "sucrose and other sugars" includes simple sugars (monosaccharides and disaccharides) added to or contained in the products.

This proposal reflects the concerns of the majority of public comments previously received, is consistent with the Food Package Advisory Panel's recommendations, and is consistent with the overall purpose of the WIC

Program. That purpose, to provide supplemental nutritious food and nutrition education as an adjunct to health care during critical periods of development in order to prevent the occurrence of health problems and improve health status, will be better met by this proposal. Since WIC Program participants have demonstrated nutritional problems and are at risk, it is critical that the Department provide exemplary food choices to supplement participants' diets and serve as nutrition education messages in themselves.

Whole Grain Cereals. In response to the request for comments on the inclusion of whole grain cereals regardless of iron content, the Department received 114 comments. Eighty comments supported the inclusion of whole grain cereals regardless of iron content, while 34 comments opposed including whole grain cereals if they did not meet the iron requirement.

Commenters who supported the inclusion of whole grain cereals regardless of iron content stated that these cereals would increase the fiber content of the food packages as well as provide a source of B vitamins and trace minerals. Commenters who opposed the inclusion of whole grain cereals if they did not meet the iron requirement questioned the benefits of including whole grain cereals at the expense of the iron content of the package. These commenters also stated that many whole grain cereals provide less fiber, B vitamins and trace minerals than the fortified cereals currently authorized.

Inclusion of whole grain cereals regardless of iron content would allow the use of some popular cereals in the WIC Program, and therefore, be acceptable to many people. To allow the inclusion of whole grain cereals regardless or iron content would, however, drastically reduce the amount of iron provided below the level provided by the current package.

Additionally, there are no standards of identity for whole grain cereals. Therefore, problems similar to those discussed in the section of this preamble on whole grain bread would be encountered if the Department were to allow whole grain cereals regardless of iron content. The Food Package Advisory Panel recommended that the Department not allow whole grain cereals which do not meet the iron requirement. The Department agrees with this recommendation and is proposing to authorize only those whole grain cereals which meet the iron requirement and sugar limitation. The Department is requesting comments on the inclusion of whole wheat bread in the food packages for pregnant and breastfeeding women and children. If a decision is made to include whole wheat bread, an additional source of fiber, B vitamins and trace minerals would be provided in these food packages.

Highly Fortified Cereals. The Department received 105 comments on the exclusion of highly fortified cereals. Sixty-three comments from local and State agencies and interest groups supported the exclusion of highly fortified cereals. Nine comments from local and State agencies and interest groups supported exclusion of these cereals only for children under four years of age. Three comments from a State agency and local agencies supported exclusion of highly fortified cereals which contain 100 percent of the USRDA for vitamin A and/or vitamin D. Thirty comments from local and State agencies and the general public opposed the exclusion of highly fortified cereals.

Commenters who supported the exclusion of highly fortified cereals stated that the provision of one food containing 100 percent of the USRDA for certain nutrients may be confusing to participants because participants are encouraged, through nutrition education, to consume a diet consisting of a variety of foods to obtain needed nutrients. Commenters who supported the exclusion of highly fortified cereals for children under four stated that cereals which are fortified at 100 percent of the USRDA for adults and children four or more years of age supply greater than 100 percent of the USRDA for children under four years of age. Commenters who supported exclusion of cereals which contain 100 percent of the USRDA for vitamin A and/or vitamin D stated that the high levels of vitamin A and/or vitamin D in these cereals may contribute to toxicity in young children if the intake of these vitamins from other sources is also substantial. Commenters who opposed the exclusion of highly fortified cereals stated that the danger of toxicity from use of these cereals is minimal and would only occur if the child were taking a large daily dose of supplementary vitamins over a long period of time, in addition to consuming these cereals.

The Food Package Advisory Panel believed that the provision of cereals which contain 100 percent of the USRDA for any nutrient would conflict with the definition of a supplemental food program and that a single food should not provide the total daily nutrient requirement for participants. Therefore, the panel recommended that highly foritified cereals be excluded from all food package.

Vitamins such as the B vitamins and vitamin C are water soluble. When the intake of water soluble vitamins is greater than the amount needed by the body, the excess is excreted in the urine. Therefore, problems of toxicity are not found with water soluble vitamins. However, problems of toxicity can be exhibited when excessive quantities of fat soluble vitamins such as vitamin A and vitamin D are ingested. The Department is concerned about the possibility of toxicity resulting from excessive intakes of vitamin A or vitamin D.

Because of this concern, the Department considered restricting cereals for one to three year olds that contained more than 50% of the USRDA for vitamin A and vitamin D for adults and children four or more years of age. This would have eliminated four cereals. However in reviewing the available evidence the department found that cases of vitamin A and vitamin D toxicity in infants and young children have been uncommon in the U.S. Fomon et al. found that moderate overdoses of vitamin D in the range of 1380 to 2370 I.U., representing approximately three to six times the RDA for preschoolers, had no detrimental effect on growth. (*36*) Excessive intakes of vitamin D in the range of 50,000 to 100,000 I.U. daily have been shown to be potentially dangerous to children and adults. (*37*) Similarly for vitamin A, adverse effects have been shown to occur at levels 20 to 30 times the RDA for this nutrient. Most recent cases of vitamin A and D toxicity have been attributed to an excessive intake of a vitamin supplement. It would appear that only under unusual circumstances would vitamin toxicity be likely to occur in preschoolers. The Department has therefore decided not to restrict highly fortified cereals for one to three year olds. The Department is interested in comments on the question of highly fortified cereals.

Artificial Flavors and Colors. The Department received 103 comments on the exclusion of cereals which contain artificial flavors and colors. Fifty-seven comments from State and local agencies, interest groups and the general public supported the exclusion of cereals that contain artificial flavors and colors and thirty-six comments from State and local agencies opposed the exclusion of these cereals. Commenters in support of the exclusion of cereals which contain artificial flavors and colors stated that there may be a relationship of these food ingredients to health and behavior problems such as hyperactivity. Additionally, some commenters stated that artificial flavors and colors only

serve a cosmetic purpose and, therefore, are unnecessary. Commenters who opposed the exclusion of cereals with artificial flavors and colors stated that there is insufficient evidence on which to base a restriction.

Dr. Ben Feingold has proposed the hypothesis that hyperkinetic behavior in children is related to a large variety of chemicals widely used by food processors as synthetic flavors and colors. The dietary regimen advocated by Dr. Feingold for the management of hyperkinesis specifies the exclusion of these synthetic food additives.(*38*) The Feingold hypothesis has received considerable attention but the issue of the effect of synthetic food additives on the health and behavior of children remains controversial. Early studies have been considered inconclusive because of shortcomings in study design. The later, more reliable studies may be interpreted to suggest that although there does appear to be a subset of children with behavioral disturbances who do respond to the Feingold diet, the specific elimination of synthetic food colors cannot be considered a major factor in the reported responses of a majority of these children.(*39*) Controlled clinical studies of the role of synthetic flavors in the Feingold diet have not been undertaken because of the difficulty of establishing double blind experimental conditions.(*40*)

The Department has decided to allow the inclusion in the food packages of cereals containing synthetic flavors and colors. At present the evidence is not strong enough to regulate in this area. If a parent is concerned about the consumption of products which contain synthetic flavors or colors by his/her child, (s)he can be advised of possible alternatives through nutrition education.

In summary, the proposed changes in requirements for cereals are: (1) a reduction in the iron requirement for cereals for participants who at certification do not exhibit signs of iron deficiency, from 28 to 15 milligrams of iron per 100 gram of dry cereal (45 to 25 percent of the USRDA for iron); and (2) the establishment of a maximum level of sugar at 6 grams per ounce dry cereal. Cereals which the Department knows currently meet the requirements are listed.

Cereal	Iron (percent of USRDA)	Sugar (grams per ounce)
Corn Total	100	3
Total	100	3
Product 19	100	3
Concentrate	50	3
Cream of Wheat, Regular	45	0
Cream of Wheat, Instant	45	0
Quick Cream of Wheat	45	0
Mix and Eat, Regular	45	0
Kix	45	2
Buc Wheats	45	5
Country Corn Flakes	45	3
Fortified Oat Flakes	45	6
(Cereals listed below are not authorized for anemic participants)		
Puffed Wheat*	25	1
Toastie O's*	25	1
Puffed Rice*	25	0
Cheerios*	25	1
Wheat Chex*	25	2
Special K*	25	2
Wheaties*	25	3
Grape Nut Flakes*	25	4
40% Bran Flakes*	25	5
Life*	25	5
Bran Chex*	25	5
Cinnamon Life*	25	6
All Bran*	25	6
Halfsies*	25	5

*These cereals are not authorized for participants exhibiting signs of iron deficiency.

The Department acknowledges that this list may be incomplete and requests industry to send it the current specifications on any additional cereals which meet the proposed requirements.

Food Packages

Each of the proposed food packages contains some or all of the supplemental foods described in the preceding section of this preamble in varying amounts appropriate for the different categories of participants. The food packages are described below. The quantities included in the descriptions are the maximum quantities authorized.

Food Package I—Infants 0 to 2–4 months. This food package provides 403 fluid ounces of iron fortified concentrated liquid infant formula. An extra 52 fluid ounces may be issued on an individual basis provided the need is demonstrated and documented by a physician. Equivalent amounts of powdered formula or ready-to-feed formula may be substituted in the amounts specified in the regulation.

Food Package II—Infants 2–4 to 6 months. This food package provides infant formula as described under Food Package I. Additionally, 24 ounces (dry weight) of infant cereal is provided.

Food Package III—Infants 6 to 12 months. This food package for older infants provides infant formula as described under Food Package I. Fluid whole milk, evaporated whole milk, dry whole milk or low calorie formula may be substituted for infant formula at the rates specified in the regulation. The extra 52 ounces authorized for infant formula does not apply to these substitutes. This food package also provides infant cereal as described under Food Package II. Additionally, 92 fluid ounces of single strength adult fruit juice are provided. Frozen concentrated fruit juice may be substituted for single strength fruit juice as long as the reconstituted volume is no greater than the amount authorized for single strength juice. Infant juice may be substituted for adult juice at the rate of 63 fluid ounces of infant juice per 92 fluid ounces of single strength adult juice provided the need is documented by the competent professional authority.

Food Package IV—Children 1 to 5 years. This food package provides 24 quarts of fluid whole milk or its substitutes as described in the regulation, two dozen eggs, 36 ounces (dry weight) of cereal, 276 fluid ounces single strength juice, and one pound of mature dried beans or peas or 18 ounces of peanut butter. Frozen concentrated juice may be substituted for single strength juice as long as the reconstituted volume is no greater than the amount authorized for single strength juice.

Food Package V—Children 1 to 5 with Special Dietary Needs. The food package for children with special dietary needs provides iron-fortified infant formula as described under Food Package I. Low calorie formula may be substituted for infant formula. However, the extra 52 ounces authorized for infant formula does not apply to low-calorie formula. This food package also provides 36 ounces (dry weight) of cereal and 138 fluid ounces of single strength juice. Frozen concentrated juice may be substituted for single strength juice as long as the reconstituted volume is no greater than the amount authorized for single strength juice.

Food Package VI—Pregnant and Breastfeeding Women. The food package for pregnant and breastfeeding women provides 28 quarts of fluid whole milk or its substitutes as described in the regulation, two dozen eggs, 36 ounces (dry weight) cereal, 276 fluid ounces of single strength juice, and one pound of mature dried beans or peas or 18 ounces of peanut butter. Frozen concentrated juice may be substituted for single strength juice as long as the reconstituted volume is no greater than the amount authorized for single strength juices.

Food Package VII—Non-breastfeeding Postpartum Women. The food package for postpartum women provides 24 quarts of fluid whole milk or its substitutes as described in the regulation, two dozen eggs, 36 ounces (dry weight) of cereal, and 184 fluid ounces of single strength juice. Frozen concentrated juice may be substituted for single strength juice as long as the reconstituted volume is no greater than

the amount authorized for single strength juice.

Commodities

This proposal includes provisions for the Department to purchase and distribute, at the request of a State agency, commodity foods. Funds allocated to the State agency will be used to purchase and distribute commodity foods which are requested. The commodity foods available to State agencies will be equivalent in quantity and quality to those authorized supplemental foods specified in the regulation.

Substitutions

Pub. L. 95–627 grants the Secretary the authority to approve a State agency's plan to substitute different foods which are nutritionally equivalent to the authorized supplemental foods in order to allow for different cultural eating patterns. This section of the legislation was written primarily to permit areas outside the continental United States to operate a WIC Program which provides foods indigenous to the area. This regulation proposes that any State agency which wants to make such substitutions submit to FNS a plan for the substitution of foods in keeping with the goals of the Program. Substitution requests will be reviewed by the Agency in order to be approved.

The current regulation concerning the food package will remain in effect until the proposed regulation is revised in response to comments received and the final regulation is published.

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It is proposed to revise 7 CFR 246.8 to read as follows:

§ 246.8 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants.

(b) *State agency responsibilities.* State agencies shall:

(1) Identify foods which are acceptable for use under the Program in accordance with the requirements of this section and provide a list of acceptable foods and maximum monthly quantities to local agencies, State auditors, and Department auditors; and

(2) Ensure that local agencies: (i) make available at least one food from each group in each food package listed in paragraph (c) of this section. However, this does not mean that the local agency must provide each participant with a food from each food group.

(ii) Make available to participants the supplemental foods, as authorized in paragraph (c) of this section; and

(iii) Designate a competent professional authority to prescribe types of supplemental foods in quantities appropriate for the participant, taking into consideration, at each certification, the participant's age and dietary needs. In the case of breast fed infants, if supplemental feedings of infant formula are necessary or desired, infants should receive appropriate quantities of infant formula. The amount of supplemental foods shall not exceed the maximum quantities specified in this section:

(c) *Food packages.* There are seven food packages available under the Program which may be provided to participants. The authorized supplemental foods shall be prescribed from food packages according to the category and nutritional need of the participant. The food packages are as follows:

Note.—The metric units given are mathematical conversions. If packaging practices change, the authorized food quantities will be revised accordingly.

(1) *Food Package I—Infants 0 to 2–4 months.* (i) Iron-fortified formula intended for use by infants, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 miligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per 100 mililiters, i.e., approximately 20 kilocalories per fluid once of formula at standard dilution. Concentrated liquid or powdered formula shall be provided, except that ready-to/feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Infant formula:	
Concentrated liquid formula—	403 fluid oz. (11.9 liters).
Addition*	52 fluid oz. (1.5 liters).
or	
Powdered formula	May be substituted at the rate of 8 lb (3.6 kg) per 403 fluid oz. (11.9 liters) of concentrated liquid formula.
Addition*	1 lb. (.4 kg).
or	
Ready-to-feed formula	May be substituted at the rate of 26 fluid oz. (.8 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
Addition*	104 fluid oz. (3.1 liters).

*Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by a physician.

(2) *Food Package II—Infants 2–4 to 6 months.* (i) Formula as specified in paragraph (c)(1)(i).

(ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(iii) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Infant formula:	
Concentrated liquid formula—	403 fluid oz. (11.9 liters).
Addition*	52 fluid oz. (1.5 liters).
or	
Powdered formula	May be substitution at the rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 liters) of concentrated liquid formula.
Addition*	1 lb. (.4 kg).
or	
Ready-to-feed formula	May be substituted at the rate of 26 fluid oz. (.8 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
Addition*	104 fluid oz. (3.1 liters).
Infant cereal	24 oz. dry (.7 kg).

*Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by a physician.

(3) *Food Package III—Infants 6 to 12 months.* (i) Infant formula as specified in paragraph (c)(1)(i) *Substitutes.* The following types of milk may be substituted for all or part of the infant formula: Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or evaporated whole milk which contains 400 International units of vitamin D per reconstituted quart (.9 liter), or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter). However, the participant's parent or guardian shall be informed that the substitution will result in a reduction of the iron content in the infant food package. Additionally, if the physician determines and documents the need for a low calorie infant formula, infants may receive an iron-fortified infant formula intended for use by infants which is a complete nutritional beverage not requiring the addition of any ingredients other than water prior to being served in a liquid state, which contains at least 10 milligrams of iron per liter of formula at standard dilution and which supplies 54 kilocalories per 100 milliliters, i.e., approximately 16 kilocalories per fluid ounce at standard dilution. Concentrated liquid or powdered formula shall be provided, except that ready-to-feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice. Infant juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters may be authorized provided the need is documented by a competent professional authority.

(iv) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Infant formula:	
Concentrated liquid formula—	403 fluid oz. (11.9 liters).
Addition*	52 fluid oz. (1.5 liters).
or	
Powdered formula	May be substituted at the rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 liters) of concentrated liquid formula.
Addition*	1 lb. (.4 kg).
or	
Ready-to-feed formula	May be substituted at the rate of 26 fluid oz. (.8 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
Addition*	104 fluid oz. (3 liters).
or	
Fluid whole milk	92 fluid oz. (2.7 liters).

or	
Frozen concentrated juice	May be substituted for formula at the rate of 1 qt. (.9 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
or	
Evaporated whole milk	May be substituted for formula at the rate of 13 fluid oz. (.4 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
or	
Dry whole milk	May be substituted for formula at the rate of 1 lb. (.4 kg) per 39 fluid oz. (1.2 liters) of concentrated liquid formula.
Infant cereal	24 oz., dry (.7 kg).
Juice:	
Single strength adult juice	May be substituted as long as the reconstituted volume is no greater than the amount authorized for single strength juice.
or	
Infant juice	May be substituted at the rate of 63 fluid oz. (1.9 liters) of infant juice per 92 fluid oz. (2.7 liters) of single strength adult juice.

* Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by a physician. The additional formula does not apply to low-calorie formula, fluid whole milk, evaporated whole milk, or dry whole milk.

(4) *Food Package IV—Children 1 to 5 years.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, Natural cheddar, Swiss, Brick, Edam, Gouda, Meunster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 15 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce), except that for participants who at certification exhibit signs of iron deficiency the iron content of the cereal shall not be less than 28 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs of dried egg mix.

(v) Peanut butter or mature dried beans or peas, includig but not limited to lentils, black, navy, kidney, garbonzo, soy, pinto, and mung beans, crowder, cow, split and black-eyed peas.

(vi) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 liters).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 liter) per qt. (.9 liter) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 liter) per qt. (.9 liter) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 liters) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
Eggs:	
Eggs	2 doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs.
Cereals (hot or cold)	36 oz., dry (1 kg).
Juice:	
Single strength juice	276 fluid ounces (8.2 liters).
or	
Frozen concentrated juice	May be substituted as long as the reconstituted volume is no greater than the amount authorized for single strength juice.
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 ounces (.5 kg).

(5) *Food Package V—Children with Special Dietary Needs.* Children with special dietary needs may receive the following supplemental foods if the physician determines and documents that such a child's condition precludes the use of the supplemental foods specified in paragraph (c)(4) of this section. (i) Infant formula as specified in paragraph (c)(1)(i) of this section. *Substitutes.* If the physician determines and documents the need for a low calorie infant formula children may receive an iron fortified infant formula intended for use by infants which is a complete nutritional beverage not requiring the addition of any ingredients other than water prior to being served in a liquid state, which contains at least 10 milligrams of iron per liter of formula at standard dilution and which supplies 54 kilocalories per 100 milliliters, i.e., approximately 16 kilocalories per fluid ounce at standard dilution. Concentrated liquid or powdered formula shall be provided, except that ready-to-feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) Cereal (hot or cold) which contains a minimum of 15 milligrams or iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce), except that for participants who at certification exhibit signs of iron deficiency the iron content of the cereal shall not be less than 28 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Infant formula:	
Concentrated liquid formula	403 fluid oz. (11.9 liters).
Addition*	52 fluid oz. (1.5 liters).
or	
Powdered formula	May be substituted at a rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 liter(s) of concentrated liquid formula.
Addition*	1 lb. (.4 kg).
or	
Ready-to-feed formula	May be substituted at the rate of 26 fluid oz. (.8 liter) per 13 fluid oz. (.4 liter) of concentrated liquid formula.
Addition*	104 fluid oz. (3.1 liters).
Cereal (hot or cold)	36 oz., dry (1 kg).
Juice:	
Single strength juice	138 fluid oz. (4.1 liters).

or	
Frozen concentrated juice	May be substituted as long as the reconstituted volume is no greater than the amount authorized for single strength juice.

*Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by a physician. The additional formula does not apply to low-calorie formula.

(6) *Food Package VI—Pregnant and Breastfeeding Women.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liters); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, Natural Cheddar, Swiss, Brick, Edam, Gouda, Meunster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minimum of 15 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce), except that for participants who at certification exhibit signs of iron deficiencies the iron content of the cereal shall not be less than 28 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dried beans of peas, including but not limited to lentils, black, navy, kidney, garbonzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(vi) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	23 qt. (26.5 liters).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 liter) per qt. (.9 liter) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 liter) per qt. (.9 liter) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 liters) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
Eggs:	
Eggs	2 doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs.
Cereal (hot or cold)	36 oz., dry (1 kg).
Juice:	
Single strength juice	276 fluid oz. (8.2 liters).
or	
Frozen, concentrated juice	May be substituted as long as the reconstituted volume is no greater than the amount authorized for single strength juices.
Legumes:	
Dry beans and peas	1 lb. (.4 kg).
or	
Peanut butter	18 ounces (.5 kg).

(7) *Food Package VII—Postpartum Women.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, Natural cheddar, Swiss, Brick, Edam, Gouda, Meunster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minumum of 15 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per 1 oz.), except for participants who at certification exhibit signs of iron deficiency the iron content of the cereal shall not be less than 28 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 liters).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 liter) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid ounces (.4 liter) per qt. (.9 liter) of fluid whole milk.
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 liter) per qt. (.9 liter) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 liters) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 liters) of fluid whole milk.
Eggs:	
Eggs	2 doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs.
Cereal (hot or cold)	36 oz., dry (1 kg).
Juice:	
Single strength juice	184 fluid ounces (5.4 liters).
or	

Food	Quantity
Frozen concentrated juice.....	May be substituted as long as the reconstituted volume is no greater than the amount authorized for single strength juice.

(d) *Use of Commodity Foods.* (1) At the request of a State agency, the Department shall purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency shall be equivalent to the foods specified in paragraph (c) of this section.

(2) The State agency shall:

(i) Distribute the commodity foods to the local agency.

(ii) Ensure satisfactory storage conditions for the commodity foods, including documentation of proper insurance.

(iii) Ensure that the local agency has proper storage facilities for the commodity foods.

(e) *Substitute foods.* (1) The State agency may submit to FNS a plan for substitution of foods acceptable for use in the Program to allow for different cultural eating patterns. The plan shall include the State's agency's justification for the proposed substitution, including a specific explanation of the cultural eating pattern which requires the proposed substitution and other information necessary for FNS to evaluate the plan as specified in paragraph (e)(2) of this section.

(2) FNS shall evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) *Nutritional equivalence.* Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) *Availability.* The proposed substitute must be widely available to participants in the areas where the substitute is intended to be used.

(iii) *Cost.* The cost of the substitute must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS shall approve the State plan for substitution of foods for different cultural eating patterns based on the evaluation criteria specified in paragraph (2) above and the State agency's justification for the substitution. The State agency shall use substitute foods only after receiving the written approval of FNS.

(Child Nutrition Amendments of 1978, Pub. L. 95-627, 92 Stat. 3603 *et seq.*)

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Draft Impact Analysis is available from Jane W. McNeil, Acting Director, Supplemental Food Program Division, FNS, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8206.

Dated: November 27, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

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