8-20-80
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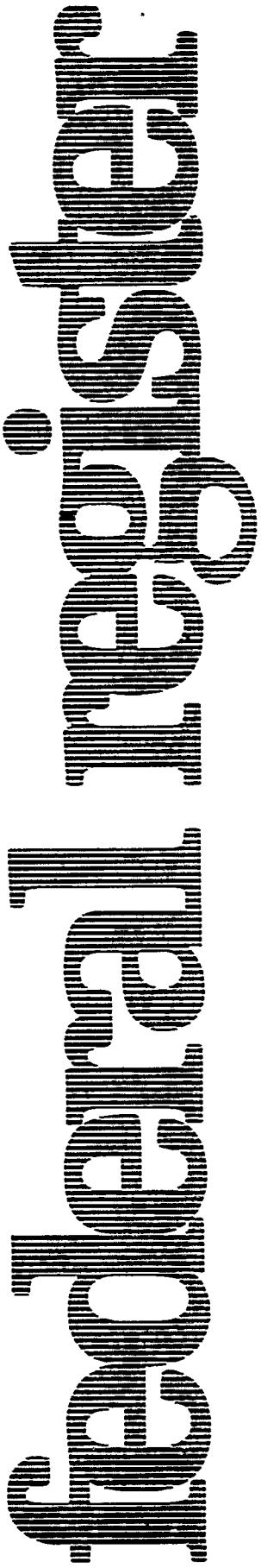

Wednesday
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# Highlights

55556 **Grant Programs—Data Processing** SBA announces availability of FY 1980 funds to continue its data base development work; apply by 8–22–80

55426 **Scholarships and Fellowships** HHS sets forth requirements for award of scholarships to students receiving academic training in medicine, osteopathy, dentistry, and other health professions for the National Health Service Corps; effective 8–20–80

55566 **Old-Age, Survivors and Disability Insurance** HHS/Sec'y updates and rewrites in simpler language rules determining disability and blindness; effective 8–20–80 (Part II of this issue)

55465 **Common Carriers** ICC adopts rule which will change the way that storage-in-transit (SIT) charges are assessed on household goods moving interstate or foreign commerce; effective 11–18–80; comments by 9–19–80

55520 **Fuel** DOE/EIA publishes alternative fuel price ceilings and incremental price threshold for high cost natural gas; effective 9–1–80

55474 **Customs Duties and Inspection** Treasury/Customs proposes to amend regulations relating to U.S. and Canada in-transit truck procedures; comments by 10–20–80

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# Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

55469 **Commodities Exchanges** CFTC in a proposed rulemaking requests comments on function of current price limit rules and practices of designated contract markets; comments by 11–18–80

55559 **Exports** Treasury/Customs advises exporting community of new provisions which change procedures regarding disclosure of information on export documents; effective 8–1–80

55502 **Antidumping** Commerce/ITA determines final countervailing duty for certain iron-metal castings from India; effective 8–20–80

55425 **Procurement** VA amends regulations to specify that small purchases be reserved for exclusive participation of small business concerns in most cases; effective 8–27–80

55636 **Pensions** PBGC prescribes reporting and notification requirements for reportable events imposed by the Employee Retirement Income Security Act of 1974; effective 9–19–80 (Part III of this issue)

55419 **Nuclear Energy** NRC deletes provision for general license authorization for use of source material in humans by physicians, pharmacists and others receiving source material in form of medicinals or drugs; effective 9–19–80

55654 **Endangered and Threatened Wildlife** Interior/FWS determines the Beaver Dam Slope population of the desert tortoise in Utah to be threatened species with critical habitat; effective 9–19–80 (Part IV of this issue)

55668 **Generalized Systems of Preferences (GSP)** Trade announces deadline for requests to participate in public hearings and of acceptance for review of petitions requesting modification of list of articles eligible to receive duty-free treatment under GSP (Part V of this issue)

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# Rules and Regulations

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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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 991

### Hops of Domestic Production; Expenses of the Hop Administrative Committee, and Rate of Assessment for the 1980–81 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation authorizes expenses and a rate of assessment for the 1980–81 marketing year, to be collected from handlers to support activities of the Committee which locally administers the Federal marketing order covering hops of domestic production.

**DATES:** Effective August 1, 1980 through July 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, U.S. Department of Agriculture, Washington, DC, (202) 447–5053.

**SUPPLEMENTARY INFORMATION:** Findings. Pursuant to Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

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), as the order requires that the rate of assessment for a particular market year shall apply to all assessable hops handled from the beginning of such year which began August 1. To enable the Committee to meet marketing year obligations approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Committee. To effectuate the declared purposes of the Act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication, without opportunity for further comments. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from J. S. Miller (202) 447–5053.

**§ 991.315 Expenses and rate of assessment.**

(a) Expenses that are reasonable and likely to be incurred by the Hop Administrative Committee during the 1980–81 marketing year, will amount to $255,000.

(b) The rate of assessment for said year payable by each handler in accordance with § 991.56 is fixed at 0.4 cent per pound of salable hops.

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

Dated: August 14, 1980.

Charles R. Brader,

*Director, Fruit and Vegetable Division.*

[FR Doc. 80-25252 Filed 8-19-80; 8:45 am]
BILLING CODE 3410-02-M

## NUCLEAR REGUALTORY COMMISSION

### 10 CFR Part 40

### Deletion of Source Material Medicinals From the General License for Small Quantities of Source Material

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its licensing regulations by deleting the provision for general license authorization of the use of source material [1] in humans by physicians, pharmacists, and other persons receiving source material in the form of medicinals or drugs. Thorotrast, containing alpha-emitting thorium-232 dioxide, was the only source material medicinal used in humans. However, as the radiobiological hazards of alpha-emitting radionuclides became known, the product fell into disuse and production of Thorotrast was discontinued in 1965. This action will require authorization by means of an NRC specific lciense for internal or external administration of source material, or the radiation therefrom, to human beings.

**EFFECTIVE DATE:** September 19, 1980.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Bozik, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone 301–443–5860).

**SUPPLEMENTARY INFORMATION:** Thorotrast, authorized for use by the general license in § 40.22, "Small quantities of source material," of 10 CFR Part 40, and used as an X-ray contrast agent, has been the only source material utilized as a medicinal; no other thorium or uranium compounds have been used as source material medicinals. Thorotrast is the colloidal dioxide of thorium-232 which is an alpha-emitting radionuclide. As the radiobiological hazards of these radionuclides became apparent, the carcinogenic potential of Thorotrast became evident, and, in 1965, the production of Thorotrast was stopped. Improvements in X-ray machines and imaging techniques have resulted in Thorotrast being replaced with nonradioactive contrast agents. The Food and Drug Administration (FDA) terminated the approved New Drug Application (NDA) for Thorotrast on June 13, 1977.

NRC and FDA both strive for consistency with respect to each other's regulations. On March 6, 1980, NRC published a proposed rule (45 FR 14589) to amend the general license in § 40.22 by deleting the authorization for the

[1] Source material, as defined in 10 CFR 40.4(h) means, among other things, uranium or thorium, or any combination thereof, in any physical or chemical form.

following persons to use and transfer small quantities of source material:

(1) Pharmacists using source material solely for compounding medicinals;

(2) Physicians using source material for medicinal purposes; and

(3) Persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs.

Under the proposed rule, the following groups would still retain their authorization under this general license to use small quantities of source material for research, development, educational, commercial or operational purposes:

(1) Commercial and industrial firms;

(2) Research, educational and medical institutions; and

(3) Federal, State and local government agencies.

A new paragraph would be added under the proposed rule to the general license in § 40.22 of 10 CFR Part 40 which would prohibit licensees from administering source material, or the radiation therefrom, either internally or externally, to human beings, except where authorized by an NRC specific license.

The public was invited to submit written comments on the proposed rule by May 6, 1980. Eight comments were received, and all supported the proposed amendment. One commenter qualified his support by inquiring if the people whose authorization is being withdrawn by this amendment have been making other use of source material. To the best of the Commission's knowledge, no one in the affected groups has been using source material since Thorotrast production was discontinued in 1965. Therefore, the Commission is adopting the final rule in the form identical to the proposed amendment.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 40 is published as a document subject to codification.

1. Section 40.22 of 10 CFR Part 40 is amended by revising paragraph (a), and by adding a new paragraph, (c), to read as follows:

**§ 40.22 Small quantities of source material.**

(a) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions and Federal, State and local government agencies to use and transfer not more than fifteen (15) pounds of source material at any one time for research, development, educational, commercial or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive more than a total of 150 pounds of source material in any one calendar year.

* * * * *

(c) Persons who receive, possess, use or transfer source material pursuant to the general license in paragraph (a) of this section are prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by NRC in a specific license.

(Secs. 62, 63, 161b., Pub. L. 83-703, 68 Stat. 932, 933, 948b. (42 U.S.C. 2092, 2093, 2201b.); Sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-97, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Bethesda, Md., this 7th day of August 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

*Acting Executive Director for Operations.*

[FR Doc. 80-25331 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF COMMERCE

## Economic Development Administration

## 13 CFR Part 309

## Environmental Requirements

**AGENCY:** Economic Development Administration (EDA), Department of Commerce.

**ACTION:** Interim rule.

**SUMMARY:** Regulations promulgated by the Council on Environmental Quality (40 CFR Parts 1500-1508) directed each executive agency to develop procedures to implement the requirements of the National Environmental Policy Act of 1969, as amended, in its programs. EDA's procedures developed in response to this requirement were published in the Federal Register (45 FR 41028, June 17, 1980) as EDA Directive 17.02-2. This amendment conforms EDA's regulation on environmental review to the procedures contained in Directive 17.02-2.

**DATES:** Effective date: August 14, 1980. Comments by: October 20, 1980.

**ADDRESS:** Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Andrew Kauders, Special Assistant for the Environment, (202) 377-4208.

**SUPPLEMENTARY INFORMATION:** The purpose of this amendment is to remove any inconsistences between EDA's CEQ-approved environmental review procedures as contained in Directive 17.02-2 and its previous review policies as contained in the environmental regulation, 13 CFR § 309.18. This amendment does not represent any changes from the EDA policies and procedures concerning the environmental review of its actions as announced in the recently published directive.

Since the specific procedures governing environmental review of actions are described in detail in the directive and since the directive is readily available to EDA applicants, other interested parties and the public in general, the environmental regulation does not repeat those matters. Instead, the regulation states EDA's policy regarding environmental review of its actions and refers readers to the directive for further information on specific procedures.

Because the subject matter of this amendment has been made available for public review and comment through publication of Directive 17.02-2 in the Federal Register, EDA is publishing this rule as an interim regulation.

Since this change in EDA procedures is required by the Council on Environmental Quality, EDA has no significant discretion in implementing this change. As a result, this regulation is deemed not to be significant under the criteria of Executive Order 12044 and Department of Commerce and EDA procedures implementing it. However, in the spirit of the executive order, EDA will accept comments on the regulation for 60 days after publication until October 20, 1980 and will consider these comments before publishing the regulation in final form.

Accordingly, EDA revises 13 CFR 309.18 to read as follows:

**§ 309.18 Environmental requirements.**

(a) It is the policy of EDA to ensure that proper environmental review of its actions takes place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

(b) Environmental reviews of EDA actions are conducted in accordance with the procedures described in EDA Directive 17.02-2 which is available from any EDA office.

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

Dated: August 14, 1980.

Robert T. Hall,

*Assistant Secretary for Economic Development.*

[FR Doc. 80-25322 Filed 8-19-80; 8:45 am]

BILLING CODE 3510-24-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket No. C-3028]

### Fred Meyer, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Portland, Oreg. operator of a chain of retail stores to provide each charge account customer having an outstanding credit balance with a periodic statement setting forth the amount of the credit balance; and enclose with regular monthly statements, a notice advising that credit balances are refundable upon request. Refunds of credit balances must be made upon request or automatically at the end of a six-month period. The firm is further required to refund, with interest all unpaid credit balances existing between January 1, 1974 and the effective date of the order. The order additionally requires that the firm notify layaway customers who had not completed their purchases during the fourteen (14) months prior to entry of the order that they have the option of either completing the transaction or receiving a refund of the layaway account credit balance; refund credit balances to any customer who indicates, in response to a notice, that the purchase was not completed and the customer received no reimbursement or credit on other merchandise; and maintain specified records for at least three years.

**DATES:** Complaint and order issued July 23, 1980.[1]

**FOR FURTHER INFORMATION CONTACT:** Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174, (206) 442-4655.

**SUPPLEMENTARY INFORMATION:** On Wednesday, April 30, 1980, there was published in the Federal Register, 45 FR 28754, a proposed consent agreement with analysis In the Matter of Fred Meyer, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-35 Employment of independent agencies; 13.533-45 Maintain records; 13.533-55 Refunds, rebates and/or credits. Subpart-Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1895 Scientific or other relevant facts.

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

James A. Tobin,

*Acting Secretary.*

[FR Doc. 80-25278 Filed 8-19-80; 8:45 am]

BILLING CODE 6750-01-M

### 16 CFR Part 13

[Docket No. C-3029]

### Towle Manufacturing Co.; Prohibited Trade Practices, and Affirmative Corrective Actions.

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Newburyport, Mass. manufacturer, importer and distributor of silver products to cease establishing, maintaining or enforcing any agreement or arrangement with its dealers that has the effect of fixing and enforcing resale prices for its products, and conditioning retention of dealerships on adherence to suggested resale prices. The firm is prohibited from inducing dealers or prospective dealers to report those who fail to adhere to suggested resale prices and barred from taking adverse action against reported dealers. Materials containing resale pricing information must include a statement advising that dealers are not bound to listed prices. Respondent is further required to reinstate those dealers who were terminated for failing to comply with the firm's pricing policy and maintain a file containing specified data for a period of three years.

**DATES:** Complaint and order issued July 29, 1980.[1]

**FOR FURTHER INFORMATION CONTACT:** Lois G. Pines, Director, 2R, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, Mass. 02114. (617) 223-6621.

**SUPPLEMENTARY INFORMATION:** On Thursday, May 22, 1980, there was published in the Federal Register, 45 FR 34293, a proposed consent agreement with analysis In the Matter of Towle Manufacturing Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.350 Customers or prospective customers. Subpart—Combining Or Conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures. Subpart—Cutting Off Supplies Or Service: §13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise. Subpart—Maintaining Resale Prices: § 13.1130 Contracts and agreements; § 13.1150 Penalties; § 13.1160 Refusal to sell; § 13.1165

[1] Copies of the Complaint and the Decision and Order filed with the original document.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

Systems of espionage; 13.1165–80 Requiring information of price cutting.

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

James A. Tobin,

*Acting Secretary.*

[FR Doc. 80-25277 Filed 8-19-80; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 865

### Air Force Disability Review Board; Deletion of Regulations

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is amending Title 32, Chapter VII of the CFR by deleting Subpart C—Air Force Disability Review Board, from Part 865—Personnel Review Boards. Subpart C is deleted because the basic document has been rescinded. The intended effect of this amendment is to improve 32 CFR, Chapter VII, by removing unnecessary material.

**EFFECTIVE DATE:** August 11, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, D.C. 20330, telephone: (202) 697–1861.

Carol M. Rose,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 80-25299 Filed 8-19-80; 8:45 am]

BILLING CODE 3910-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1578-3]

### Approval and Revision of the District of Columbia Implementation Plan; Correction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Correction of final rule.

**SUMMARY:** This notice clarifies and corrects Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as published in the Federal Register on January 4, 1980, 45 FR 1024. It was the intent of the Administrator to approve until December 31, 1980, amendments to §§ 8–2:704 (Allowable Sulfur Content in Fuel Oil) and 8–2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations submitted on December 27, 1978, by Mayor Walter E. Washington. Such intent, by the Administrator, was reflected throughout the notice but not so stipulated in the Part 52 delineation. Therefore, § 52.470(c)(13) of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is corrected to read as follows:

### Subpart J—District of Columbia

**§ 52.470 Identification of plan.**

* * * * *

(c) the plan revision listed below was submitted on the date specified * * *

(13) Amendments to §§ 8–2:704 (Allowable Sulfur Content in Fuel Oil) and 8–2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations submitted on December 27, 1978, by Mayor Walter E. Washington is hereby approved until December 31, 1980.

**EFFECTIVE DATE:** Immediately August 20, 1980. This notice clarifies information which appeared in a previous Federal Register notice and does not alter the intent or substance of that rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Bernard E. Turlinski, Regional Energy Coordinator (3AH13), Air Programs Branch, U.S. Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, telephone number (215) 597–9944.

(42 U.S.C. 7401–642)

Dated: July 31, 1980.

Alvin R. Morris,

*Acting Regional Administrator.*

[FR Doc. 80-25279 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

### 40 CFR Part 52

[FRL 1558-7]

### Approval and Promulgation of Implementation Plan, Oregon State Implementation Plan; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule, correction.

**SUMMARY:** Corrections are being made to EPA's final regulations approval of portions of the Oregon State Implementation Plan. These regulations were published in the Federal Register on June 24, 1980 at 45 FR 42265–42279.

**FOR FURTHER INFORMATION CONTACT:** Laurie M. Kral, Air Programs Branch, 1200 6th Avenue, Seattle, Washington 98101 (206) 442–1226.

**SUPPLEMENTARY INFORMATION:** Corrections: In Federal Register Docket 80–18812 appearing on June 24, 1980, 45 FR 42265, the following corrections are made:

1. On page 42278 in § 52.1970 the paragraph now designated (C) (26)–(30) should be changed to (C) (27)–(31).

2. On page 42279 in § 52.1985 the paragraph now designated (3) (i) and (ii) should be deleted.

Dated: August 6, 1980.

L. Edwin Coate,

*Acting Regional Administrator.*

[FR Doc. 80-25251 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

### 40 CFR Part 52

[FRL 1578-5]

### Approval and Promulgation of Implementation Plans; Delaware State Implementation Plan; Correction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Correction of Final rule.

**SUMMARY:** Certain amendments to § 52.420 (Identification of Plan) of 40 CFR Subpart I Delaware which appeared in the July 30, 1979 Federal Register, 44 Fed. Reg. 44496 were inadvertently codified as §§ 52.420(c)(11). The proper designation of this paragraph should be §§ 52.420(c)(12).

**EFFECTIVE DATE:** August 20, 1980. This notice corrects an error which appeared in a previous Federal Register notice and does not alter the intent or substance of that rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Patricia Sheridan, U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone (215) 597–8176.

(42 U.S.C. 7401–642)

Dated: July 11, 1980.

A. R. Morris,

*Acting Regional Administrator.*

[FR Doc. 80-25335 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

### 40 CFR Part 52

[FRL 1569-2]

### Approval and Promulgation of Implementation Plans; North Carolina: Duke—CP&L Variance

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA announces its approval of a three-year variance granted by North Carolina on June 14, 1979, to the coal-fired electric generating units of Duke Power Company and Carolina Power & Light Company except for the provision concerning excess emissions during periods of startup, shutdown, and verified malfunction. EPA, furthermore, at this time is disapproving utility operation and maintenance manuals and the definitions of startup, shutdown, and verified malfunction contained therein which were incorporated by reference as part of this variance. In addition, EPA is disapproving the definitions of startup, shutdown, and verified malfunction found in a letter submitted by the State on December 14, 1979.

The variance exempts these units from the particulate emission limits specified in North Carolina Regulation 15 N.C.A.C. 2D.0503, Control of Particulates from Fuel Burning Sources. Under the variance, less stringent interim limits are specified for each unit. These interim limits expire on June 30, 1982, unless sooner revoked, modified, or extended by the State (with the modification or extension finally concurred in by EPA for purposes of federal enforcement). If the State does not act by June 30, 1982, to extend or modify the interim limits, the original particulate matter limits of Regulation 15 N.C.A.C. 2D.0503 will again be in effect for these units as of July 1, 1982.

**DATE:** These actions are effective September 19, 1980.

**ADDRESSES:** Copies of the materials submitted in conjunction with this revision are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Library, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

North Carolina Division of Environmental Management, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:** Walter Bishop, Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365. 404/881-3286 (FTS 257-3286).

**SUPPLEMENTAL INFORMATION:** Under the original North Carolina Implementation Plan, the coal-fired power plants of the State's two electric utilities, Duke Power and Carolina Power & Light, are subject to particulate emission limits ranging from 0.10 to 0.14 pounds per million Btu heat imput depending on the size of the electric generating unit (the more stringent limit applies to the larger units). On June 14, 1979, the North Carolina Environmental Management Commission granted the two companies a three-year variance from these limits, which are set forth in Regulation 15 N.C.A.C. 2D.0503 of the State Implementation Plan (SIP), and established interim limits as indicated in the following table. The interim limits are to be met on a continuous basis.

| Facility | Original particulate emission limit (number per million Btu) | Revised (interim) particulate emission limit (number per million Btu) |
|---|---|---|
| Duke Power: | | |
| Allen | 0.10 | 0.25. |
| Belews Creek | 0.10 | 0.25. |
| Buck | 0.13 | 0.23 (Units 3-5, 3-6,4)<br>0.20 (Units 5,6). |
| Cliffside | 0.11 | 0.23 (Units 1,2).<br>0.20 (Units 3,4).<br>0.25 (Unit 5). |
| Dan River | 0.14 | 0.20 (Units 1,2)<br>0.25 (Unit 3). |
| Marshal | 0.10 | 0.25 |
| Riverbend | 0.12 | 0.20 |
| Carolina Power & Light: | | |
| Asheville | 0.13 | 0.25. |
| Cape Fear | 0.13 | 0.25. |
| Lee | 0.13 | 0.25. |
| Roxboro | 0.10 | 0.25 (Unit 3 at 1.6, until 1/1/80). |
| Sutton | 0.11 | 0.25 |
| Weatherspoon | 0.13 | 0.20 (Units 1,2).<br>0.25 (Unit 3). |

These interim limits were submitted for EPA's approval as a plan revision on June 18, 1979. Additional information requested by EPA was submitted on September 7, October 31, and December 14, 1979. The materials submitted by the State in support of the revision show that the interim limits will not adversely affect the attainment and maintenance of the national ambient air quality * standards nor cause any violations of the applicable prevention of significant deterioration (PSD) increments for particulate matter.

A potential problem is posed for future expansion in the vicinity of several plants since the State's materials show that a substantial portion, half or more, of the available PSD increment is consumed by the variance granted to Carolina Power & Light's Asheville plant and to Duke Power's Buck, Cliffside, Dan River, and Marshall Plants. In regard to the five plants referenced in the immediately preceding sentence, as well as Cape Fear, Sutton, Weatherspoon, Lee, Cliffside, Riverbend, and Belews Creek, EPA believes that the State has not submitted information adequate to justify the baseline used to determine PSD increment consumption. In the submittal from the State, the baseline was set in every case at the allowable limit as of August 7, 1977, despite stack tests showing lower actual emissions on nearly the same date. In case of future industrial expansion in the area impacted by emissions from these plants, the State will be unable to use the allowable limit to set the baseline unless more information is provided to justify its use. It should be noted that EPA will reevaluate potential increment consumption associated with this SIP revision when EPA promulgates final PSD regulations in light of the decision of *Alabama Power Co. v. Costle,* 13 E.R.C. 1993 (D.C. Cir. 1979). In view of the expected air quality impact of the variance, EPA is approving this revision. This action is taken despite the fact that EPA cannot endorse all of the findings made by the Commission, e.g. "* * * all plants under consideration cannot consistently and continuously comply with the performance standards as set forth in the regulations; this finding is based principally on a recognition of both the technical difficulty and the unreliability inherent in retroactive application of precipitators to existing plants." (North Carolina Environmental Management Commission Variance for Duke Power and Carolina Power & Light, Findings of Fact No. 5). EPA has refrained from inquiring into the State's technical findings supporting the SIP revision in this case since those revisions meet all requirements set forth in the Clean Air Act, and the regulations and guidance adopted pursuant thereto.

The interim limits remain in effect until June 30, 1982, unless sooner revised, revoked, or extended by the Commission. If the Commission has not done so by that date, the original emission limits of Regulation 15 N.C.A.C. 2D.0503 will automatically apply once more as of July 1, 1982. EPA has obtained confirmation from the State that the above interpretation is correct.

In its Order, the Commission provided for a situation which could arise if the Commission acted by June 30, 1982, but EPA had not yet had time to take final approval/disapproval action on the Commission's action, to preclude any

possible misunderstanding, EPA has secured confirmation from the State of EPA's interpretation of the Commission's Order on this point. The correct interpretation of the language of the Commission's Order assuring the continuing effectiveness of the interim limits between any Commission action prior to June 30, 1982, and before EPA action on the resulting SIP revision, if any (if the Commission simply revokes the interim limits, no action by EPA will be called for), is that "EPA approves" means "EPA take final action." This means that for purposes of federal enforcement a modification or extension of the limitation is not effective unless concurred in by EPA in a final action on a SIP revision embodying the modification or extension. During the time before EPA final action on a modification or extension submitted before June 30, 1982, the variance limits remain in effect. Today's approval is based on this understanding.

Since the terms "startup, shutdown, and verified malfunction" are not defined in the State's Implementation Plan or in the variance itself, EPA disapproves the provision in the variance that allows excess emissions during periods of startup, shutdown, and verified malfunction. While the State sent a letter to EPA on December 14, 1979, defining these terms, EPA cannot approve the definitions adopted in this manner because the terms were not adopted by the State after notice and opportunity for a public hearing required by Section 110 of the Clean Air Act and 40 CFR 51.4 and 51.6 (1979).

Under the State Order granting the variance, the companies were required to prepare operation and maintence manuals for their coal-fired plants and submit them for the State's approval. This has been done, and copies of the manuals have been provided to EPA. However, EPA does not consider the manuals as an approvable part of the revision since there was no public hearing concerning the manuals including the definition of startup, shutdown, and verified malfunction contained in the manuals. EPA at this time is taking disapproval action on the manuals and the pertinent definitions contained in the manuals.[1] See 40 CFR 51.4(a) (1979).

These actions were proposed in the Federal Register on February 14, 1980 (45 FR 9952). Comments in response to the proposal were made by the two electric utility companies involved in the variance request. Since there comments overlap in certain respects, the comments are consolidated where appropriate for purposes of EPA's response. Responses by EPA to the public comments of Duke Power and Caroline Power & Light are attached to this final rule and are available for public inspection at the locations listed above.

[1] EPA will provide the State with further guidance regarding the drafting of a startup, shutdown, and verified malfunction provision at an early date.

**Public Comments**

*Comment:* EPA should not disapprove the provision in the variance that allows excess emissions during periods of startup, shutdown, and verified malfunction. In making this comment, the Duke Power Company (Duke) stated that the operation and maintenance manuals (of Duke and Carolina Power & Light Company (CP&L)) were submitted in a timely manner and have been approved by the (State agency) Director. Duke also asserted that the "startup" and "shutdown" definitions (in the Duke manual) are consistent with long-standing State policy, and that the "malfunction" definition is consistent with EPA-sanctioned definitions.

*Response:* Since the submitted SIP revision exempts periods of "startup, shutdown, and verified malfunction" from any emission standards, these terms must be clearly defined in the SIP revision itself to prevent this exemption from being open-ended. EPA regulations require that a public hearing be held by the State on this type of SIP revision. See 40 CFR 51.4(a)(1) and 51.6 (c) and (f) (1979). The operation and maintenance manuals were submitted by both Duke and CP&L on November 15 and 20, 1979—well after the State public hearing on the SIP revision on April 4–6, 1979. Since these important definitions and the manuals themselves were not subject to any public scrutiny before or during the State public hearing, they may not be approved by EPA as part of this SIP revision. See also Sections 110(a)(1), (a)(2), and (a)(3) of the Clean Air Act, 42 U.S.C. 7410. The State can resubmit appropriate definitions of these terms to EPA as a future SIP revision after notice and public hearings on these definitions and manuals are afforded.

*Comment:* EPA should not disapprove the startup and shutdown provisions. As support for this comment, CP&L contended that the precipitator manufacturer recommends that the precipitators not be used during periods of startup and shutdown. CP&L also asserted that "industry practice" makes these concepts sufficiently objective to permit enforcement without a definition being needed.

*Response:* See immediately preceding Response. EPA has not disapproved the concept of an exemption for "startup" and "shutdown," just the undefined exemptions as presented in this SIP revision. EPA could not approve this exemption based on something as vague and unobjective as "industry practice," which was not described or explained by CP&L.

*Comment:* No Prevention of Significant Deterioration (PSD) increment is consumed, and no increment consumption analysis is required for this SIP revision. In making this comment Duke asserted that a July 17, 1979, letter from the EPA General Counsel supported this latter position. Duke also requested the Agency to wait until PSD regulations are revised to conform to *Alabama Power Co.* v. *Costle,* 13 E.R.C. 1993 (D.C. Cir. 1979), before deciding whether an increment consumption calculation is needed for this SIP revision.

*Response:* Although PSD regulations will be revised in the future as a result of *Alabama Power,* the presently-effective definition of "baseline concentration" must be used for analyzing the subject revision. As pertinent here, that definition speaks of actual air quality as of August 7, 1977. 40 CFR 51.24(b)(11) (1979). Since neither CP&L nor Duke has admitted violations of the TSP standards around August 7, 1977, and since performance tests around that time show emissions at or below allowable emission levels, EPA concludes that emissions from the affected sources were at or below allowable levels. Thus, today's relaxation of the TSP standard (allowing higher emissions than before) results in consumption of (part of the) PSD increment. The Preamble to present PSD regulations requires that:

> Any SIP relaxations submitted after (June 19, 1978) that would affect a PSD area must include a demonstration that the applicable increment will not be exceeded. 43 FR 26380 (1978).

The March 17, 1979, letter from the EPA General Counsel does not change this position. That letter concludes that: (1) EPA has considerable discretion in evaluating data to determine baseline concentration; and (2) no increment consumption analysis is necessary if allowable emissions after a SIP revision are no higher than the baseline concentration.

*Comment:* The increment consumption should be reassessed when EPA changes PSD regulations to conform to *Alabama Power.* This commenter, CP&L, also urges EPA to consider all relevant data when reassessing increment consumption. A reason given for this recommendation is that performance at CP&L plants varies markedly, and the

company can find no apparent explanation for this variation.

*Response:* The Agency will of course reassess increment consumption if such is required in revised PSD regulations conforming to *Alabama Power.* In that event, EPA will consider all relevant information that is also reliable, as has been done for this revision.

*Comment:* Today's interim limits should remain in effect after June 30, 1982, if extended by the State, even if EPA final action on an extension is not forthcoming by that date.

*Response:* A SIP revision (which an extension beyond June 30, 1982, would require in this case) is not effective for federal enforcement purposes unless and until finally approved by EPA. See Section 110(d) of the Clean Air Act, 42 U.S.C. 7410.

*Comment:* It is inappropriate to speak of a potential problem with regard to new source growth in the vicinity of the Asheville plant because (1) only one-fourth of the annual increment is used by the variance, (2) changes in air quality levels for the annual and 24-hour averaging times are insignificant beyond seven kilometers, and (3) there is sufficient increment remaining close to the plant to permit new source growth, e.g., the doubling of the plant's capacity.

*Response:* (1) The potential violation of any increment would be sufficient grounds for denying a PSD permit to a proposed source. Thus it is not relevant that a relatively modest portion of one increment is consumed if a quite large portion of another is consumed. (2) Because the consumption of increment is receptor-specific, EPA acknowledges that the potential problem spoken of would not present itself outside of the area quite close to the Asheville plant. (3) EPA required that the Cramer model be used for assessing the effect of the interim limits on the area around the Asheville plant. This model calculated the Class II 24-hour increment consumption as 29 $\mu g/m^3$, or 80 percent of the increment available (36 $\mu g/m^3$), at the point of maximum impact. Since any new emissions would consume increment, since the present units have a maximum 24-hour impact of 61 $\mu g/m^3$, and since only 7 $\mu g/m^3$ of the 24-hour increment remain for the new emissions, it appears quite unlikely that the addition of generating capacity equal to that of the present units could be accommodated under PSD at or near the Asheville plant site. While it is true that new coal-fired units, because of the Federal requirement to scrub sulfur dioxide from the off-gases, could emit a plume having a buoyancy somewhat different from that of the present units, the stack height provisions of the Clean Air Act would rule out the use of stacks higher than good engineering practice to place the modeled maximum impact of the new plume at a receptor well-removed from that at which the present plume has its maximum impact.

Actions: The North Carolina revision is approved except insofar as it allows excess emissions in periods of startup, shutdown, and malfunction. The exemption for excess emissions during startup, shutdown and verified malfunction is disapproved. In addition, the manuals and the definitions of these terms contained therein are not approved nor are the definitions submitted by the State by letter dated December 14, 1979, approved. These actions are effective September 19, 1980.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final rule is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044. Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a).

Dated: August 7, 1980.

Douglas M. Costle,

*Administrator.*

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

## Subpart II—North Carolina

1. In § 52.1770 paragraph (c) is amended by adding subparagraph (22) as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(22) Three-year variance for the coal-fired units of Duke Power Company and Carolina Power & Light Company from the particulate emission limits of Regulation 15 N.C.A.C. 2D.0503, with submittals on June 18, September 7, October 31, and December 14, 1979, by the North Carolina Department of Natural Resources and Community Development.

2. Section 52.1781 is added as follows:

**§ 52.1781 Control strategy: Sulfur oxides and particulate matter.**

The plan's control strategy for particulate matter as outlined in the three-year variance for the coal-fired units of Duke Power Company and Carolina Power & Light Company from the particulate emission limits of Regulation 15 N.C.A.C. 2D.0503, with submittals on June 18, September 7, October 31, and December 14, 1979, by the North Carolina Department of Natural Resources and Community Development, is disapproved only insofar that it provides an exemption for excess emissions during periods of startup, shutdown, and verified malfunction. (See § 52.1770(c)(22).)

[FR Doc. 80-25836 Filed 8-19-80; 8:45 am]
BILLING CODE 6560-01-M

## VETERANS ADMINISTRATION

## 41 CFR Part 8-3

## Procurement by Negotiation; Small Purchases

**AGENCY:** Veterans Administration.

**ACTION:** Final Regulation.

**SUMMARY:** This amendment to the Veterans Administration Procurement Regulations revises a section to specify that small purchases are to be reserved for the exclusive participation of small business concerns unless offers cannot be obtained from two small business concerns that are competitive with market price and in terms of quality and delivery of the goods or services being purchased. This amendment also increases the imprest fund purchase limitation to $250 per transaction under normal circumstances and $500 per transaction under emergency conditions.

**EFFECTIVE DATE:** This rule is effective August 27, 1980.

**FOR FURTHER INFORMATION CONTACT:** Chris A. Figg, Policy and Interagency Service, Office of Supply Services, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-2334.

**SUPPLEMENTARY INFORMATION:** Pub. L. 95-507, October 24, 1978 revised the Small Business Act. One revision specifies that small purchases will be reserved exclusively for small business concerns under specified conditions. Section 8-3.602 is revised to comply with this provision.

Section 8-3.604-5 is added to increase the imprest fund purchase limitation to $250 per transaction under normal conditions and $500 per transaction in an emergency. The Department of the Treasury has specifically authorized these limitation revisions due to increased requirements to make cash purchases.

Section 8-3.604-5 is revised to require lesser documentation for imprest fund purchases which do not exceed $25. This revision is intended to better correlate appropriate documentation requirements to the value of individual transactions.

It is the general policy of the Veterans Administration to allow time for interested parties to participate in the regulatory process (§ 1.12, Title 38, CFR). Since this amendment merely implements public law and revises internal administrative restrictions, compliance with notice and public procedure is considered unnecessary.

Approved: August 13, 1980.

By direction of the Administrator.

Rufus H. Wilson,

*Deputy Administrator.*

## PART 8-3—PROCUREMENT BY NEGOTIATION

### Subpart 8-3.6—Small Purchases

1. In § 8-3.602, paragraph (a) is revised to read as follows:

**§ 8-3.602 Policy.**

(a) Pursuant to Pub. L. 95-507, small purchases will be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. Such procurements from small business concerns will be considered small business set-asides.

* * * * *

2. In § 8-3.604-6, paragraphs (a) and (b) are revised to read as follows:

**§ 8-3.604-6 Procurement and payment.**

(a) Each purchase costing $25.00 or more will be supported by a cash register receipt, invoice, sales slip, or other sales document which shall, if possible, contain an itemized listing of the itmes purchased and be signed by the vendor or his/her agent. The cash receipt or sales document shall be furnished by the vendor to whom cash payment is made. Such cash receipt or sales document shall indicate the name of the vendor. When it is not possible to secure the listing of signature, the purchaser (employee authorized to accomplish the cash purchase) shall prepare and sign Standard Form 1165, Receipt for Cash-Subvoucher, listing thereon the name of the vendor and the ariticles or services purchased. The vendor's receipt for cash payment shall be attached to the SF 1165 subvoucher.

(b) Each purchase costing less than $25.00 shall be supported by a receipt for cash or sales document as required in paragraph (a) of this section, except that the signature of the vendor or agent need not be secured. When a receipt is obtained for purchases costing less than $25.00, the SF 1165 is not required. If a receipt cannot be secured, the purchaser shall prepare and sign the SF 1165, listing thereon the name of the vendor and the article or services purchased.

* * * * *

3. In § 8-3.605-3, paragraph (a) is revised to read as follows:

**§ 8-3.605-3 Agency order forms.**

(a) VA Form 60-2138 (or 90-2138), Order for Supplies or Services, and VA Form 60-2139 (or 90-2139), Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Standard Forms 147 and 148.

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(38 U.S.C. 210(c); 40 U.S.C. 486(c))

[FR Doc. 80-25304 Filed 8-19-80; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 62

### National Health Service Corps Scholarship Program

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** These regulations set forth the requirements for the award of scholarships under the National Health Service Corps Scholarship Program to students receiving academic training in medicine, osteopathy, dentistry, and other health professions in order to assure an adequate supply of trained health professionals for the National Health Service Corps.

**EFFECTIVE DATE:** These regulations are effective August 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Alice Swift, Associate Director for Planning, Evaluation, and Legislation, Division of Health Professions Training Support, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, Room 9-50, Hyattsville, MD 20782 (telephone 301-436-6788).

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare published in the **Federal Register** on September 27, 1978 (43 FR 43713), interim-final regulations revoking the existing Part 62 entitled "Public Health and National Health Service Corps Scholarship Training Program" and substituting a new Part 62 entitled "National Health Service Corps Scholarship Program." This new Part 62 establishes the National Health Service Corps Scholarship Program authorized by section 751 of the Public Health Service Act ("Act"), as amended by the Health Planning and Health Services Research and Statistics Extension Act of 1977 (Pub. L. 95-83), the Public Health Services Act Amendments of 1977 (Pub. L. 95-215), and Title II of Pub. L. 96-76.

Section 751 of the Act (42 U.S.C. 294t) authorizes the Secretary to enter into contracts with students who are enrolled in courses of study leading to degrees in medicine, osteopathy, dentistry, or other health professions. Students who enter into the contracts agree to serve 1 year for each year of scholarship support they receive or 2 years, whichever is greater, as members of the National Health Service Corps ("NHSC") providing full-time clinical services in health manpower shortage areas designated under section 332 of the Act and its implementing regulations (42 CFR Part 5).

These regulations were published as interim-final regulations with no proposed rulemaking procedures because of the need to award scholarships for the 1978-79 academic year. However, all interested persons were invited to submit written comments on the interim-final regulations not later than November 27, 1978. All public comments received not later than that date have been considered in the preparation of these final regulations. The Department received comments from private citizens, professional health organizations, universities, and government agencies. The comments and the Department's response to the comments are discussed below. For clarity, the comments and responses are arranged according to the section numbers and titles of the interim-final regulations to which they pertain.

*§ 62.2 Definitions.*

Section 62.2 of the regulations defines the term "school", in part, as meaning a school of medicine, osteopathy, dentistry or other health profession which provides training leading to a degree of doctor of medicine, osteopathy, dentistry or an appropriate degree for a particular health profession.

With respect to this definition of "school" one commenter noted that not all health professionals receive degrees upon the completion of their academic training and recommended that this definition be revised to read "training leading to a degree of doctor of medicine, osteopathy, dentistry or an equivalent credential for a particular health profession."

The Secretary agrees with the commenter's recommendation and has changed the regulations accordingly.

*§ 62.3 Who is eligible to apply for a Scholarship Program award?*

Section 62.3 has been amended by adding a new paragraph (c) which provides that individuals who receive scholarship awards under the Indian Health Service Scholarhip Program (section 757 of the Act) or the Scholarship for First-Year Students of Exceptional Financial Need Program (section 758 of the Act) are ineligible to participate in the National Health Service Corps Scholarship Program ("Scholarship Program") while receiving awards under section 757 or 758 of the Act.

This amendment makes explicit the current Scholarship Program policy concerning this matter. It is the Secretary's view that Federal funds appropriated under the three separate programs (sections 757, 758, and the Scholarship Program) should be used effectively and efficiently in assuring the greatest number of health professionals to provide health services in health manpower shortage areas.

*§ 62.6 How will individuals be selected to participate in the scholarship program?*

Section 62.6(a) sets forth a general description of the procedures which will be used in selecting Scholarship Program participants. That section provides that all applications will first be placed in priority categories described in § 62.6(b) of the regulations, and that these applications will then be evaluated on the basis of the criteria in § 62.6(c) giving special consideration to (1) medical and osteopathic students intending to engage in family practice, internal medicine, pediatrics, or osteopathic general practice residencies following graduation and (2) dentists who intend to undertake general practice training following graduation or who have no plans for post-graduate training.

Three commenters objected to the special consideration provision in § 62.6(a) because in their view it is inflexible and may preclude the NHSC from giving special consideration to health specialties other than those listed (e.g. psychiatry) if it determines that there is a need for these additional health specialties.

The Secretary recognizes the commenter's concern in this instance and has amended the regulations to provide that special consideration will also be given to those applicants who intend to pursue other types of clinical practices or specialized training for which the NHSC has a particular need. These other specialties or clinical practices to be given special consideration will from time-to-time be published in the Federal Register and made available to applicants for scholarships.

Section 62.6(c) of the regulations provides that the selection of Scholarship Program participants will be made on the basis of the following criteria: (1) work experience, (2) community background, (3) career goals, (4) faculty recommendation and (5) academic performance. With respect to these selection criteria, one commenter suggested that since the "special consideration" provision in § 62.6(a) is an additional criterion for selection, this provision should be included in the list of criteria set forth in § 62.6(c) of the regulations. In response to this commenter's concern the regulations have been amended to include the special consideration provision under § 62.6(c).

Three commenters stated that the order in which the selection criteria were listed implies that these criteria have weighted values with the greatest weight being assigned to the first listed criteria, and lesser weights being assigned to the remaining factors in descending order.

The Secretary in listing the selection criteria did not intend to suggest that the order of this listing was made on a weighted value basis, but rather intended that the selection criteria be examples of the types of factors which the Secretary will take into consideration in determining which scholarship applications to approve. To clarify the Secretary's intent with respect to the selection of participants in the Scholarship Program, § 62.6(c) has been amended to provide that the Secretary will take into consideration those factors, including work experience, community background, career goals, faculty recommendation, and academic performance which he or she determines necessary to assure effective participation in the Scholarship Program.

Another commenter objected to the implication that continuation awards would be subject to the selection criteria listed in § 62.2(c). In response to this comment, a new § 62.6(e) entitled "Continuation Awards" has been added and § 62.6(a) has been amended to provide that these continuation awards will not be subject to the evaluation and selection criteria in that section.

*§ 62.7 What will an individual be awarded for participating in the scholarship program?*

One commenter noted that the regulations make no provision for the payment of tuition on or before its due date.

The regulations have not been amended in response to the commenter's notation. It is the Secretary's view that since the payment of tuition will routinely be made following the acceptance of the participant in the NHSC Scholarship Program and the receipt from the school in which the participant is enrolled of a bill for the amount of the tuition, there is no reason for the regulations to specify the timing of the payment.

*§ 62.8 What does an individual have to do in return for the scholarship program award?*

One commenter suggested that the regulations should include a statement on the minimum salary guaranteed Scholarship Program participants and the option of becoming a "precommissioned" officer in the Commissioned Corps of the Public Health Service.

The Secretary believes that these regulations are not an appropriate mechanism to list the minimum salary levels for Scholarship Program participants while they are fulfilling their service obligations because these levels change yearly for both the Commissioned Corps and the Civil Service and reflect varying degrees of training and experience possessed by Scholarship Program participants. The Secretary notes, however, that the approximate salary levels will be distributed each year in the applicant packets for each eligible health discipline.

With respect to the commenter's second suggestion that the regulations be amended to provide that Scholarship Program participants have the option of

becoming "precommissioned" officers in the Commissioned Corps of the Public Health Service, the Secretary notes that since the authority to appoint officers to the Commissioned Corps is set forth in section 203 of the Act and its implementing regulations (42 CFR Part 21), the regulations need not be amended to supplement this authority.

Section 62.8 of the regulations has been changed to clearly indicate that a participant's period of obligated service under the Scholarship Program will begin when he or she begins providing health services in the health manpower shortage area to which he or she is assigned by the Secretary.

Another commenter requested that the rules and regulations governing the release from service obligations under section 753 of the Act be clearly and completely explained to all scholarship participants.

The Secretary is currently developing policy and programmatic guidelines for implementation of section 753. All scholarship recipients will be provided with these guidelines in the near future.

Section 62.8(f) of the regulations provides that any participant who demonstrates exceptional promise for medical research may perform his or her Scholarship Program service obligation by participating in the National Research Service Award ("NRSA") Program for individual Postdoctoral Fellows (section 472 of the Act). This section also provides that any individual who participates in this NRSA Program will receive credit toward satisfying the service obligation owed under the Scholarship Program for the period of time he or she is engaged in activities meeting the service requirements of the NRSA Program. In addition, any individual whose time served under the NRSA Program is less than his or her total Scholarship Program obligation must serve the remainder of this total Scholarship Program obligation as a member of the NHSC.

This section of the regulations has been amended to provide that any individual whose period of service under the NRSA Program is less than the total service obligation owed under the Scholarship Program may complete the remainder of his or her Scholarship Program service obligation (1) by engaging in research activities which meet the service criteria of the NRSA Program, or (2) as a member of the NHSC providing health services in the full-time clinical practice of his or her profession. This amendment gives the Secretary the flexibility of allowing an individual whose Scholarship Program service obligation is greater than the period of time served under the NRSA Program to engage in approved research activities for the remainder of his or her Scholarship Program service obligation.

*§ 62.9 Under what circumstances can the period of obligated service be deferred to complete approved graduate training?*

Three commenters objected to the three-year limitation on the period of time for which the obligated service of a physician may be deferred to complete graduate training, noting that physicians require a longer post-graduate training period to become fully trained psychiatrists. Two other commenters suggested that the regulations be amended to allow deferment for any period of time necessary to complete specialty training.

Section 752(b)(5)(A) (as in effect on September 28, 1979) authorized the Secretary to defer, upon request of a participant receiving a degree from a school of medicine, osteopathy, or dentistry, the beginning of that participant's service obligation "until the end of the period of time (not to exceed three years) required to complete an internship, residency or other advanced clinical training." However, on September 29, 1979, section 752(b)(5)(A) of the Act was amended by Title II, section 202 of Pub. L. 96-76 to provide that the period of the ferment to complete internship, residency or other advanced clinical training for participants receiving degrees from schools of medicine, osteopathy or dentistry may not exceed three years or "such greater period as the Secretary, consistent with the needs of the Corps, may authorize." This amendment also provides that participants who receive degrees from schools of veterinary medicine, optometry, podiatry or phamacy will, upon request, receive a deferment to complete internship, residency or other advanced clinical training for a period "not to exceed one year or such greater period as the Secretary, consistent with the needs of the Corps, may authorize." Thus, this amendment creates a new category of participants whose service obligations may be deferred upon request (veterinarians, optometrists, podiatrists, and pharmacists) and authorizes the Secretary to extend the period of deferment for this new category as well as the existing category of physicians, osteopaths, and dentists, if the Secretary determines that this extension is consistent with the needs of the NHSC. Sections 62.9 and 62.2 (definition of approved graduate training) of the regulations have been changed to reflect these statutory amendments.

Section 62.9(a) of the regulations provides that any Scholarship Program recipient who receives a degree in medicine or osteopathy and who does not intend to enter an approved graduate training program under section 752(b)(5)(A) of the Act, as amended, must complete at least one year of approved graduate training relating to primary care before beginning his or her period of obligated service. Specifically, the regulations provide that this one year of primary care training must be in (1) an allopathic flexible first-year program whose sponsorship includes approved residencies in family practice, internal medicine, or pediatrics, or a categorical first-year program in family practice, internal medicine or pediatrics, or (2) a rotating internship in osteopathic medicine.

The purpose of this requirement is to assure that physicians who begin their service obligations will be qualified to engage in the delivery of primary care in the NHSC. The Secretary notes, however, that since medical residencies are evolving in nature, there may be training programs other than those described in § 62.9(a) which provide in their first year the experience necessary to assure that physicians are qualified to deliver health services in the NHSC. Thus, the regulations have been changed to provide that in addition to the programs described in § 62.9(a) this required one year training can be in "such other programs as the Secretary determines provides comparable experience."

*§ 62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?*

One commenter noted that the two-year period of repayment under section 62.10(b) for participants who fail to maintain an acceptable level of academic training, are dismissed from school for disciplinary reasons, or voluntarily terminate their course of study, is unreasonable because it places an undue hardship upon an individual who is no longer in school and who presumably does not have the financial resources to repay the default penalty.

The Secretary recognizes the commenter's concern and has amended the period of repayment under § 62.10(b) from 2 to 3 years.

One commenter noted that the $1,500 liquidated damage penalty in section 754(a) of the Act for failure to accept payment of the scholarship award places the applicant at a severe disadvantage, and suggested that any individual whose application for a scholarship is approved should be given

a ten day grace period following the notification of acceptance in the Scholarship Program to reject the scholarship award without penalty. The Secretary believes that the suggested change is not necessary because consistent with the statutory scheme of the Scholarship Program authority each individual whose application for participation is approved by the Secretary will be notified of this approval and given an opportunity to accept this offer of participation before the Secretary signs his or her Scholarship Program contract. The specific amount of time to be allowed for acceptance of the offer will be published in the application materials.

One respondent objected to the "exorbitant" default penalty in section 754(c) of the Act which requires, in part, that any participant who fails to begin his or her service obligation must repay an amount equal to three times the total scholarship award (including interest). The Secretary notes that Congress adopted the substantial default penalty in section 754(c) in order to emphasize that the purpose of the Scholarship Program is to obtain health services for health manpower shortage areas and not to "subsidize health professional education". Thus, in light of this clear congressional intent and the statutory language in section 754(c), the regulations have not been changed in response to the commenter's objection.

Finally, the Department has made a number of editorial changes to clarify the regulations. Accordingly, the existing Part 62 of 42 CFR is revoked and a new Part 62 is adopted to read as set forth below.

Dated: April 8, 1980.

Charles Miller,

*Acting Assistant Secretary for Health.*

Approved: August 7, 1980.

Patricia Roberts Harris,

*Secretary.*

## PART 62—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

Sec.


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62.14 What are the special provisions relating to recipients of awards under the PH/NHSC scholarship training program who will also receive awards under the scholarship program?


Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Sec. 751 of the Public Health Service Act, 90 Stat. 2281 (42 U.S.C. 294t).

### § 62.1 What is the scope and purpose of the National Health Service Corps scholarship program?

These regulations apply to the award of scholarships under the National Health Service Corps Scholarship Program authorized by section 751 of the Public Health Service Act (42 U.S.C. 294t) to students receiving academic training in medicine, osteopathy, dentistry, and other health professions. The purpose of this program is to assure an adequate supply of trained health professionals for the National Health Service Corps which is used by the Secretary to improve the delivery of health services in health manpower shortage areas.

### § 62.2 Definitions.

As used in this part:

"Acceptable level of academic standing" means the level at which a full-time student retains eligibility to continue in attendance in school under the school's standards and practices.

"Act" means the Public Health Service Act, as amended.

"Approved graduate training" means those programs of graduate training in medicine, osteopathy, dentistry or other health professions which (a) lead to eligibility for board certification or which provide other evidence of completion, and (b) have been approved by the appropriate health professions body as determined by the Secretary.

"Full-time student" means an individual pursuing a course of study leading to a degree in medicine, osteopathy, dentistry or an equivalent credential for a particular health profession who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required at the school. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course of study.

"Health manpower shortage area" means the geographic area, the population group, the public or nonprofit private medical facility, or other public facility which has been determined by the Secretary to have a shortage of health manpower under section 332 of the Act and its implementing regulations (42 CFR Part 5).

"National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Public Health and National Health Service Corps Scholarship Training Program", or "PH/NHSC Scholarship Training Program", means the program authorized by section 225 of the Act as in effect on September 30, 1977, and repealed on October 1, 1977.

"Scholarship Program" means the National Health Service Corps Scholarship Program authorized by section 751 of the Act (42 U.S.C. 294t).

"Scholarship Program participant" or "participant" means an individual whose application to the Scholarship Program has been approved and whose contract has been accepted and signed by the Secretary.

"School" means a school of medicine, osteopathy, dentistry, or other health profession which (a) provides training leading to a degree of doctor of medicine, doctor of osteopathy, doctor of dentistry, or an equivalent credential for a particular health profession, and (b) which is accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

"School year" means all or part of the 12-month period from July 1 through June 30 during which an applicant is enrolled in a school as a full-time student.

"Service" means the United States Public Health Service.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means one of the several States, the District of Columbia, the

Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

**§ 62.3 Who is eligible to apply for a scholarship program award?**

(a) To be eligible for a scholarship under this part an applicant must:

(1) Be accepted for enrollment, or be enrolled, as a full-time student in a school located in a State;

(2) Be pursuing a course of study or program offered by the school leading to a degree in medicine, osteopathy, dentistry, or an equivalent credential for a particular health profession;

(3) Be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the National Health Service Corps;

(4) Be a National of the United States; and

(5) Submit an application to participate in the Scholarship Program together with a signed contract as described in section 751(f) of the Act.

(b) Any applicant who owes an obligation for professional practice to a State or other entity under an agreement entered into before filing an application under this part is ineligible for an award unless a written statement satisfactory to the Secretary is submitted from the State or entity that (1) there is no potential conflict in fulfilling the service obligation to the State or entity and the Scholarship Program, and that (2) the Scholarship Program service obligation will be served before the service obligation for professional practice owed to the State or entity.

(c) Any individual who receives a scholarship under the Indian Health Service Scholarship Program (section 757 of the Act) or the Scholarship Program for First-Year Students of Exceptional Financial Need (section 758 of the Act) is ineligible to participate in the Scholarship Program during the School year(s) for which the scholarships under sections 757 or 758 of the Act were awarded.

**§ 62.4 To whom will scholarship program awards be available in addition to individuals pursuing courses of study leading to degrees in medicine, osteopathy, or dentistry?**

The Secretary will, from time-to-time, publish in the Federal Register a list of those health professions in addition to medicine, osteopathy, and dentistry for which the National Health Service Corps has need and for which support is available. The Secretary will also publish any other eligibility criteria, in addition to those in § 62.3, that may be required to assure that participants can be utilized during their periods of obligated service in a manner that will best meet the needs of the National Health Service Corps.

**§ 62.5 How is application made for a scholarship program award?**

Each individual desiring a scholarship under this part must submit an application (including a signed contract as required under section 751(f) of the Act) in the form and at the time prescribed by the Secretary.

**62.6 How will individuals be selected to participate in the scholarship program?**

(a) *General.* In deciding which applications for participation in the Scholarship Program will be approved, the Secretary will place the applications into categories based upon the selection priorities described in paragraph (b) of this section. Except for continuation awards (see paragraph (e) of this section) the Secretary will then evaluate each applicant under paragraph (c) of this section.

(b) *Priorities.* (1) First priority will be given to individuals who have previously received a scholarship under the PH/NHSC Scholarship Training Program, a scholarship under this Scholarship Program, or a scholarship under section 758 of the Act, authorizing scholarships for first-year students of exceptional financial need. (2) Second priority will be given to applicants who are entering their first year of study.

(c) *Selection.* (1) In selecting participants, the Secretary will take into consideration those factors which he or she determines necessary to assure effective participation in the Scholarship Program. These factors may include, but not be limited to (i) work experience, (ii) community background, (iii) career goals, (iv) faculty recommendation, and (v) academic performance.

(2) Special consideration will be given to (i) medical and osteopathic students who indicate their intention to enter family practice, internal medicine, pediatrics, or osteopathic general practice residencies, (ii) dental students who indicate their intention to undertake general practice training following graduation or who plan no postgraduate training, and (iii) those individuals who indicate an intent to pursue other types of clinical practice or specialized training for which the National Health Service Corps has a particular need.

(d) *Duration of Scholarship award.* Subject to the availability of funds for the Scholarship Program, the Secretary will award a participant a scholarship under this part for a period of 1 school year.

(e) *Continuation awards.* Subject to the availability of funds for the Scholarship Program, the Secretary will award a continuation scholarship if (1) the participant requests a continuation, (2) the award will not extend the total period of Scholarship Program support beyond 4 years, and (3) the participant is eligible for continued participation in the Scholarship Program.

**§ 62.7 What will an individual be awarded for participating in the scholarship program?**

(a) *Amount of Scholarship.* (1) A scholarship award for each school year will consist of (i) tuition, (ii) reasonable educational expenses, including required fees, books, supplies, and required educational equipment, and (iii) a monthly stipend for the 12-month period beginning with the first month of each school year in which the individual is a participant. For purposes of this section "required fees" means those fees which are charged by the school to all students pursuing a similar curriculum and "required educational equipment" means educational equipment which must be rented or purchased by all students pursuing a similar curriculum at that school.

(2) The Secretary may enter into a contract with the school in which the participant is enrolled for the direct payment of tuition and reasonable educational expenses in the participant's behalf.

(b) *Payment of Scholarship: leave-of-absence; repeated course work.* The Secretary will suspend scholarship payments to or on behalf of a participant if the school (1) approves a leave-of-absence for the participant for health, personal, or other reasons, or (2) requires the participant to repeat course work for which the Secretary has previously made scholarship payments under § 62.7. However, if the repeated course work does not delay the participant's graduation date, scholarship payments will continue except for any additional costs relating to the repeated course work. Any scholarship payments suspended under this paragraph will be resumed by the Secretary upon notification by the school that the participant has returned from the leave-of-absence or has completed the repeated course work and is pursuing as a full-time student the course of study for which the scholarship was awarded.

**§ 62.8 What does an individual have to do in return for the scholarship program award?**

(a) *General.* Except as provided in paragraphs (d), (f), and (g) of this section, each participant is obligated to (1) become a member of the National Health Service Corps employed as a Commissioned Officer in the Regular or Reserve Corps of the Service or as a Federal civilian in the full-time clinical practice of the participant's profession and (2) serve in the health manpower shortage area to which the participant is assigned by the National Health Service Corps.

(b) *Beginning of Service.* (1) The period of obligated service will begin when the Scholarship Program participant begins to provide services in the health manpower shortage area to which he or she is assigned by the Secretary. Except for those participants who receive a deferral under § 62.9 (a) or (b), this assignment will be made by the Secretary as soon as possible following: (i) the completion of the participant's course of study leading to a degree in medicine, osteopathy, dentistry, or an equivalent credential for a particular health profession, and (ii) appointment of the participant as a Commissioned Officer in the Regular or Reserve Corps of the Service or as a civilian member of the National Health Service Corps.

(2) For purposes of this paragraph, "appointment" means only those appointments as Commissioned Officers in the Regular or Reserve Corps of the Service or as civilian members of the National Health Service Corps made specifically for the purpose of serving a participant's period of obligated service.

(c) *Duration of service.* Except as provided in § 62.14(b)(1), the period for which the Scholarship Program participant is obligated to serve is equal to 1 year for each school year for which the participant receives a scholarship award under this part, or 2 years, whichever is greater.

(d) *Service by detail.* If the Secretary determines that there is no need in a health manpower shortage area for a member of the profession in which the Scholarship Program participant is obligated to provide service, the Scholarship Program participant may be detailed to serve the period of obligated service as a full-time member of the profession for which the participant has been trained, in any unit of the Department of Health and Human Services as the Secretary may determine.

(e) *Creditability of approved graduate training.* Except as provided in § 62.14(b)(2), no period of approved graduate training will be credited toward satisfying the period of obligated service incurred under the Scholarship Program.

(f) *Service under the National Research Service Award Program.* (1) A Scholarship Program participant who demonstrates exceptional promise for medical research may perform the period of obligated service owed under this section by participating in the National Research Service Award Program for individual postdoctoral fellows authorized under section 472 of the Act.

(2) Exceptional promise for medical research will be demonstrated if the participant applies for a National Research Service Award for individual postdoctoral fellows, is selected to participate in this research program, and accepts the offer of participation. A Scholarship Program participant in the National Research Service Award Program will receive credit toward satisfying the period of obligated service incurred under this section for any period of time he or she is engaged in activities which meet the service requirements of the National Research Service Award Program.

(3) If the time served under the National Research Service Award Program is less than the total period of obligated service owed under the Scholarship Program, the participant will serve the remainder of the Scholarship Program service obligation (i) in activities which meet the criteria for service under the National Research Service Award Program, as approved by the Secretary or (ii) as a member of the National Health Service Corps providing health services in the full-time clinical practice of his or her health profession. A participant who fails to begin or complete the service requirements under the National Research Service Award Program may be subject to the default penalty under § 62.10(c) of this part and the default penalties under the National Research Service Award Program.

(g) *Release from service obligation to engage in private practice.* The Secretary will release a participant from all or part of the service obligation if the participant applies for a release under section 753 of the Act and agrees in writing to engage for a period equal to the remaining period of the participant's service obligation in the full-time private clinical practice of the participant's health profession, under the requirements of section 753 of the Act.

**§ 62.9 Under what circumstances can the period of obligated service be deferred to complete approved graduate training?**

(a) *Requested Deferment.* Upon the request of any participant receiving a degree from a school of medicine, osteopathy, or dentistry, veterinary medicine, optometry, podiatry or pharmacy, the Secretary will defer the beginning date of the obligated service to allow the participant to complete an approved graduate training program. The period of this deferment may not exceed (1) three years for any participant receiving a degree from a school of medicine, osteopathy or dentistry, or (2) one year for any participant recieving a degree from a school of veterinary medicine, optometry, podiatry or pharmacy. The Secretary may, however, extend this period of deferment if the Secretary determines that the extension is consistent with the needs of the National Health Service Corps.

(b) *Required Deferment.* Each participant receiving a degree in medicine or osteopathy who does not intend to enter training which can be completed within the deferment period granted under paragraph (a) of this section must complete at least one year of approved graduate training before beginning the period of obligated service. This one year of training must be in (1) an allopathic flexible first-year program whose sponsorship includes approved residencies in family practice, internal medicine, pediatrics, or a categorical first-year program in family practice, internal medicine, or pediatrics; (2) a rotating internship in osteopathic medicine; or (3) such other programs as the Secretary determines provides comparable experience. Any participant receiving a degree in medicine or osteopathy who fails to complete the one year of required training or an approved graduate training program for which a deferment was granted under paragraph (a) of this section will be subject to the default penalties of § 62.10(c).

(c) *Altering Deferment.* Before altering the length or type of approved graduate training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's approval of the alteration.

(d) *Additional Terms of Deferment.* The Secretary may prescribe additional terms and conditions for deferment under paragraphs (a), (b), and (c) of this section as necessary to carry out the purposes of the Scholarship Program.

(e) *Beginning of Service After Deferment.* Any participant whose period of obligated service has been

deferred under paragraphs (a) or (b) of this section must begin the obligated service when the participant begins to provide health services in the health manpower shortage area to which he or she is assigned by the Secretary. This assignment will be made by the Secretary as soon as possible following (1) the completion of the requested or required graduate training for which the deferment was granted, and (2) appointment as a Commissioned Officer in the Regular or Reserve Corps of the Service or as a civilian member of the National Health Service Corps.

**§ 62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?**

(a) If a participant, other than one described in paragraph (b) of this section, fails to accept payment or instructs the school not to accept payment of the scholarship provided by the Secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of $1,500 liquidated damages. Payment of this amount must be made within 30 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment.

(b) When a participant fails to maintain an acceptable level of academic standing, is dismissed from the school for disciplinary reasons, or voluntarily terminates the course of study or program for which the scholarship was awarded before completing the course of study or program, the participant must, instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under § 62.7. Payment of this amount must be made within 3 years of the date the participant becomes liable to make payment under this paragraph.

(c) If a participant fails to begin or complete the period of obligated service incurred under § 62.8, including failing to comply with the applicable terms and conditions of a deferment granted by the Secretary, the participant must pay to the United States an amount determined by the formula set forth in section 754(c) of the Act. Payment of this amount shall be made within 1 year of the date that the participant failed to begin or complete the period of obligated service, as determined by the Secretary.

**§ 62.11 When can a scholarship program payment obligation be discharged in bankruptcy?**

In accordance with section 754(d)(3) of the Act, any payment obligation incurred under § 62.10 may not be discharged in bankruptcy under Title XI of the United States Code until 5 years after the date on which the payment obligation is due.

**§ 62.12 Under what circumstances can the service or payment obligation be canceled, waived or suspended?**

(a) Any obligation of a participant for service or payment will be canceled upon the death of the participant.

(b)(1) A participation may seek a waiver or suspension of the service or payment obligations incurred under this part by written request to the Secretary setting forth the bases, circumstances, and causes which support the requested action. The Secretary may approve a request for a suspension for a period of 1 year. A renewal of this suspension may also be granted.

(2) The Secretary may waive or suspend any service or payment obligation incurred by a participant whenever compliance by the participant (i) is impossible, or (ii) would involve extreme hardship to the participant and if enforcement of the service or payment obligation would be against equity and good conscience.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience, the Secretary, on the basis of information and documentation as may be required, will consider:

(1) The participant's present financial resources and obligations;

(2) The participant's estimated future financial resources and obligations; and

(3) The extent to which the participant has problems of a personal nature, such as physical or mental disability, terminal illness in the immediate family which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

**§ 62.13 What are the limitations on the receipt of concurrent benefits?**

Under section 741(f) or 836(h) of the Act, the Secretary may agree to repay a portion of an individual's educational loans in return for the individual's agreement to practice his or her profession in an area in need of health manpower. However, a Scholarship Program participant may not enter into an agreement with the Secretary under section 741(f) or 836(h) of the Act, until either (1) the participant has completed the service obligation under the Scholarship Program, (2) the Secretary has recovered from the participant an amount determined under § 62.10, or (3) any service or payment obligation has been waived under § 62.12. In no case shall a scholarship received under these regulations be considered an educational loan for the purposes of section 741(f) or 836(h) of the Act.

**§ 62.14 What are the special provisions relating to recipients of awards under the PH/NHSC scholarship training program who will also receive awards under the scholarship program?**

(a) Except as provided in paragraph (b) of this section, if a participant has previously received an award under the PH/NHSC Scholarship Training Program and also receives an award under the Scholarship Program, the terms and conditions of these regulations will apply to the participant's entire obligation incurred under both the PH/NHSC Scholarship Training Program and the Scholarship Program.

(b) If a participant has received an award under the PH/NHSC Scholarship Training Program and also receives an award under the Scholarship Program, the following conditions apply:

(1) *Period of obligated service—carry over.* The period of obligated service owed by the participant is equal to the total number of school years for which scholarship support was awarded under both the PH/NHSC Scholarship Training Program and the Scholarship Program without regard to either Program's minimum support requirement under 42 CFR 62.7(a) (1976) as adopted on May 22, 1974 (see 39 FR 17962), and under § 62.8(c) of this part.

(2) *Credit for internship and residency training.* (i) If a participant received a

scholarship under the PH/NHSC Scholarship Training Program for any school year beginning before October 12, 1976, the participant will receive credit toward satisfying the periods of obligated service incurred under the PH/NHSC Scholarship Training Program and under § 62.8 of this part for any periods of internship or residency training served in a Service or National Health Service Corps facility.

(ii) *If a participant received a* scholarship for the first time during the 1977–78 school year under the PH/NHSC Scholarship Training Program, the participant will only receive 1 year of credit toward satisfying the period of obligated service incurred under the PH/NHSC Scholarship Training Program for internship or residency training served in a Service or National Health Service Corps facility.

(3) *Default penalties.* The PH/NHSC Scholarship Training Program default penalty will apply to a participant who fails to begin or complete the active duty service obligation incurred under that Program, and the § 62.10 default penalties will apply to a participant who fails to begin or complete the service obligation incurred under § 62.8 of these regulations. In determining which default penalty to apply when an individual who has received a Scholarship award under both the PH/NHSC Scholarship Training Program and the Scholarship Program fails to begin or complete his service obligation, the service obligations will be considered to have been served in the order in which they were incurred.

[FR Doc. 80-24838 Filed 8-19-80; 8:45 am]

BILLING CODE 4110-83-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA 5876]

### 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. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 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:

OMB Circular A–95 regarding State and local clearinghouse review of Federally assisted programs and projects is applicable.

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 date of authorization of sale of flood insurance for area | Hazard area identified |
|---|---|---|---|---|---|
| Colorado | Otero County | Rock Ford, city of | 080135 | 750527 emerg., 800603 reg | 740405 |
| Nebraska | Cass County | Greenwood, village of | 310374 | 770630 emerg., 800603 reg | 750926 |
| Arkansas | Union County | Huttig, city of | 050206 | 750623 emerg., 800604 reg | 740524 |
| California | Orange County | Anaheim, city of | 060213 | 750527 emerg., 800604 reg | 740726 |
| California | Glenn County | Willows, city of | 060059 | 750610 emerg., 800604 reg | 740726 |
| Colorado | Summit County | Breckenridge, town of | 080172 | 750725 emerg., 800604 reg | 740524 |
| Colorado | Weld County | Eaton, town of | 080180 | 750303 emerg., 800604 reg | 740510 |
| Connecticut | Tolland County | Coventry, town of | 090110 | 740107 emerg., 800604 reg | 740809 |
| Florida | Putnam County | Palatka, city of | 120273 | 750120 emerg., 800604 reg | 740719 |
| Iowa | Sac County | Lake View, city of | 190503 | 750303 emerg., 800604 reg | 760723 |
| Illinois | St. Clair County | Alorton, village of | 170617 | 740426 emerg., 800604 reg | 740405 |
| Illinois | Cook County | Dixmoor, village of | 170082 | 750721 emerg., 800604 reg | 740405 |
| Illinois | McHenry County | Fox River Grove, village of | 170477 | 730417 emerg., 800604 reg | 740405 |
| Illinois | Lake County | Grayslake, village of | 170363 | 731211 emerg., 800604 reg | 740405 |
| Illinois | Tazewell County | North Pekin, village of | 170653 | 750722 emerg., 800604 reg | 740308 |
| Illinois | Tazewell County | Pekin, city of | 170654 | 750730 emerg., 800604 reg | 740412 |
| Illinois | Lake County | Round Lake Park, village of | 170391 | 750721 emerg., 800604 reg | 740329 |
| Illinois | Carroll County | Savannah, city of | 170021 | 740404 emerg., 800604 reg | 740116 |
| Illinois | Woodford County | Spring Bay, village of | 170687 | 770826 emerg., 800604 reg | 750328 |
| Illinois | Cook County | Westchester, village of | 170170 | 721124 emerg., 800604 reg | 730907 |
| Indiana | Lake County | East Chicago, city of | 180130 | 750226 emerg., 800604 reg | 740412 |
| Indiana | Porter County | Porter, town of | 180208 | 731016 emerg., 800604 reg | 731228 |
| Kentucky | Nelson County | Bloomfield, city of | 210179 | 750808 emerg., 800604 reg | 740510 |
| Kentucky | McCracken County | McCracken County * | 210151 | 750724 emerg., 800604 reg | 741206 |
| Louisiana | East Feliciana Parish | Jackson, town of | 220333 | 760226 emerg., 800604 reg | 750110 |
| Massachusetts | Middlesex County | Chelmsford, town of | 250188 | 731206 emerg., 800604 reg | 741025 |
| Massachusetts | Franklin County | Conway, town of | 250114 | 751216 emerg., 800604 reg | 740802 |

| State | County | Location | Community No. | Effective date of authorization of sale of flood insurance for area | Hazard area identified |
|---|---|---|---|---|---|
| Massachusetts | Essex County | Georgetown, town of | 250081 | 750731 emerg., 800604 reg | 740726 |
| Massachusetts | Plymouth County | Lakeville, town of | 250271 | 750415 emerg., 800604 reg | 740906 |
| Massachusetts | Franklin County | Leverett, town of | 250120 | 750916 emerg., 800604 reg | 740628 |
| Massachusetts | Worcester County | Shrewsbury, town of | 250332 | 750411 emerg., 800604 reg | 740906 |
| Massachusetts | Essex County | Topsfield, town of | 250106 | 750926 emerg., 800604 reg | 740913 |
| Maine | Kennebec County | Chelsea, town of | 230234 | 751001 emerg., 800604 reg | 750221 |
| Maine | Aroostook County | Fort Kent, town of | 230019 | 740410 emerg., 800604 reg | 741129 |
| Michigan | Allegan County | Casco, township of | 260004 | 741106 emerg., 800604 reg | 741129 |
| Minnesota | Lac Qui Parle County | Lac Qui Parle county * | 270239 | 740703 emerg., 800604 reg | 780210 |
| Missouri | Platte County | Edgerton, city of | 290291 | 741007 emerg., 800604 reg | 741220 |
| Missouri | Dunklin County | Kennett, city of | 290129 | 731123 emerg., 800604 reg | 740329 |
| Missouri | Greene County | Republic, city of | 290148 | 750508 emerg., 800604 reg | 740405 |
| Mississippi | Panola County | Panola county * | 280125 | 740304 emerg., 800604 reg | 771125 |
| Montana | Lewis and Clark County | East Helena, city of | 300039 | 750523 emerg., 800604 reg | 740405 |
| North Carolina | Guilford County | Guilford County * | 370111 | 740430 emerg., 800604 reg | 750117 |
| New Hampshire | Grafton County | Lebanon, city of | 330061 | 711210 emerg., 800604 reg | 740920 |
| New Jersey | Union County | Roselle Park, borough of | 340473 | 730425 emerg., 800604 reg | 770422 |
| New Jersey | Middlesex County | South River, borough of | 340280 | 740618 emerg., 800604 reg | 740405 |
| New Jersey | Bergen County | Wallington, borough of | 340079 | 750618 emerg., 800604 reg | 740614 |
| New York | Rensselaer County | Brunswick town of | 361130 | 770826 emerg., 800604 reg | 761112 |
| New York | Albany County | Green Island, village of | 360009 | 741203 emerg., 800604 reg | 740201 |
| New York | Westchester County | Mount Pleasant, town of | 360919 | 731226 emerg., 800604 reg | 740503 |
| New York | Broome County | Sanford, town of | 360054 | 750725 emerg., 800604 reg | 740726 |
| New York | Niagara County | Youngstown, village of | 360515 | 730330 emerg., 800604 reg | 740301 |
| Ohio | Franklin County | Canal Winchester, village of | 390169 | 731226 emerg., 800604 reg | 740201 |
| Ohio | Franklin County | Dublin, village of | 390673 | 740621 emerg., 800604 reg | 750103 |
| Ohio | Lorain County | North Ridgeville, city of | 390352 | 750707 emerg., 800604 reg | 740607 |
| Ohio | Lucas County | Ottawa Hills, village of | 390362 | 751024 emerg., 800604 reg | 731109 |
| Ohio | Lucas County | Toledo, city of | 395373 | 701218 emerg., 800604 reg | 761008 |
| Ohio | Lorain County | Wellington, village of | 390358 | 750812 emerg., 800604 reg | 740109 |
| Pennsylvania | Northampton County | Bethlehem, township of | 420980 | 740123 emerg., 800604 reg | 740614 |
| Pennsylvania | Lancaster County | Conoy, township of | 420545 | 730706 emerg., 800604 reg | 731012 |
| Pennsylvania | Schuylkill County | Tremont, borough of | 420791 | 730426 emerg., 800604 reg | 740222 |
| South Carolina | Abbeville County | Abbeville, city of | 450001 | 751009 emerg., 800604 reg | 740531 |
| South Carolina | Newberry County | Newberry, city of | 450153 | 741127 emerg., 800604 reg | 740906 |
| South Dakota | Hughes County | Pierre, city of | 460040 | 750416 emerg., 800604 reg | 740607 |
| South Dakota | Moody County | Trent, town of | 460063 | 750218 emerg., 800604 reg | 741206 |
| Texas | Wharton County | El Campo, city of | 480653 | 750717 emerg., 800604 reg | 740607 |
| Texas | Tarrant County | Fort Worth, city of | 480596 | 710917 emerg., 800604 reg | 0 |
| Texas | Harris County | Spring Valley, city of | 480313 | 740731 emerg., 800604 reg | 740628 |
| Texas | Collin County | Wylie, city of | 480759 | 770518 emerg., 800604 reg | 761112 |
| Utah | Grand County | Moab, city of | 490072 | 740917 emerg., 800604 reg | 740621 |
| Vermont | Caledonia County | Burke, town of | 50025 | 750623 emerg., 800604 reg | 740607 |
| Washington | King County | Duvall, town of | 530282 | 771206 emerg., 800604 reg | 760820 |
| Washington | Thurston County | Tenino, town of | 530302 | 750218 emerg., 800604 reg | 750627 |
| Wisconsin | Dane County | Cambridge, village of | 550080 | 751128 emerg., 800604 reg | 731217 |
| Arizona | Pinal County | Coolidge, city of | 040082 | 750205 emerg., 800610 reg | 740405 |
| Colorado | Weld County | Ault, town of | 080179 | 750528 emerg., 800610 reg | 740517 |
| Colorado | Weld County | Gilcrest, city of | 080213 | 760921 emerg., 800610 reg | 750822 |
| Iowa | Adair County | Adair, city of | 190537 | 760812 emerg., 800610 reg | 750822 |
| Iowa | Monroe County | Albia, city of | 190541 | 760924 emerg., 800610 reg | 750919 |
| Iowa | Carroll County | Arcadia, town of | 190694 | 760903 emerg., 800610 reg | 750926 |
| Iowa | Muscatine County | Fruitland, city of | 190212 | 750606 emerg., 800610 reg | 760625 |
| Iowa | Carroll County | Glidden, city of | 190044 | 750513 emerg., 800610 reg | 740816 |
| Iowa | Delaware County | Greeley, city of | 190739 | 790503 emerg., 800610 reg | 761029 |
| Iowa | O'Brien County | Hartley, city of | 190590 | 761026 emerg., 800610 reg | 750926 |
| Iowa | Linn County | Lisbon, city of | 190607 | 780323 emerg., 800610 reg | 760319 |
| Iowa | Boone County | Madrid, city of | 190325 | 761021 emerg., 800610 reg | 750919 |
| Iowa | Harrison County | Mondamin, city of | 190149 | 750522 emerg., 800610 reg | 741016 |
| Iowa | Linn County | Mount Vernon, city of | 190192 | 751210 emerg., 800610 reg | 760604 |
| Iowa | Monona County | Rodney, city of | 190921 | 751024 emerg., 800610 reg | 780704 |
| Iowa | Woodbury County | Sloan, city of | 190299 | 750812 emerg., 800610 reg | 740524 |
| Iowa | Carroll County | Templeton, city of | 190811 | 760903 emerg., 800610 reg | 760319 |
| Iowa | Dickinson County | Terril, city of | 190812 | 761101 emerg., 800610 reg | 760910 |
| Iowa | Allamakee County | Waukon, city of | 190008 | 750826 emerg., 800610 reg | 740322 |
| Kansas | Sedgwick County | Goddard, city of | 200500 | 771130 emerg., 800610 reg | 760716 |
| Kansas | Butler County | Towanda, city of | 200534 | 780623 emerg., 800610 reg | 750808 |
| Missouri | St. Louis County | Flordell Hills, city of | 290457 | 740121 emerg., 800610 reg | 740503 |
| Ohio | Cuyahoga County | Mayfield Heights, city of | 390115 | 760503 emerg., 800610 reg | 750725 |
| Oregon | Josephine County | Cave Junction, city of | 410107 | 750513 emerg., 800610 reg | 741108 |
| Pennsylvania | Armstrong County | Apollo, borough of | 420092 | 750103 emerg., 800610 reg | 740531 |
| Pennsylvania | Washington County | Donora, borough of | 420851 | 740729 emerg., 800610 reg | 740123 |
| Arkansas | Craighead County | Caraway, city of | 050311 | 750306 emerg., 800618 reg | 750110 |
| California | Santa Clara County | Morgan Hill, city of | 060346 | 750630 emerg., 800618 reg | 740531 |
| California | Sonoma County | Sebastopol, city of | 060382 | 741213 emerg., 800618 reg | 740308 |
| Florida | Hillsborough County | Hillsborough county* | 120112 | 701009 emerg., 800618 reg | 770617 |
| Florida | Hillsborough County | Tampa, city of | 120114 | 701127 emerg., 800618 reg | 770701 |
| Illinois | McHenry County | Sunnyside, village of | 170486 | 750627 emerg., 800618 reg | 740830 |
| Kansas | Kingman County | Kingman, city of | 200183 | 750519 emerg., 800618 reg | 740215 |
| Massachusetts | Essex County | Amesbury, town of | 250075 | 750807 emerg., 800618 reg | 740614 |
| Massachusetts | Worcester County | Berlin, town of | 250294 | 750811 emerg., 800618 reg | 741018 |
| Massachusetts | Worcester County | Bolton, town of | 250296 | 750310 emerg., 800618 reg | 740628 |
| Massachusetts | Bristol County | Dighton, town of | 250052 | 730309 emerg., 800618 reg | 740802 |
| Massachusetts | Norfolk County | Dover, town of | 250238 | 751112 emerg., 800618 reg | 740920 |
| Massachusetts | Bristol County | Freetown, town of | 250056 | 750811 emerg., 800618 reg | 740802 |
| Massachusetts | Franklin County | Gill, town of | 250117 | 750902 emerg., 800618 reg | 740315 |
| Massachusetts | Hampshire County | Hatfield, town of | 250164 | 750509 emerg., 800618 reg | 740920 |
| Massachusetts | Norfolk County | Medway, town of | 250243 | 750811 emerg., 800618 reg | 740809 |
| Massachusetts | Barnstable County | Sandwich, town of | 250012 | 721229 emerg., 800618 reg | 770114 |
| Massachusetts | Middlesex County | Sherborn, town of | 250212 | 780613 emerg., 800618 reg | 770527 |
| Massachusetts | Franklin County | Sunderland, town of | 250129 | 750722 emerg., 800618 reg | 740308 |
| Massachusetts | Bristol County | Taunton, city of | 250066 | 730611 emerg., 800618 reg | 741206 |
| Massachusetts | Middlesex County | Winchester, town of | 250228 | 750811 emerg., 800618 reg | 740719 |

| State | County | Location | Community No. | Effective date of authorization of sale of flood insurance for area | Hazard area identified |
|---|---|---|---|---|---|
| Maine | Franklin County | Phillips, town of | 230060 | 751023 emerg., 800618 reg | 740614 |
| Michigan | Washtenaw County | Ann Arbor, township of | 260535 | 770925 emerg., 800618 reg | 750815 |
| Michigan | Clinton | De Witt, township of | 260631 | 750625 emerg., 800618 reg | 770617 |
| Michigan | Berrien County | St. Joseph, township of | 260045 | 750224 emerg., 800618 reg | 760730 |
| Minnesota | Kanabec County | Grasston, city of | 270215 | 800618 emerg., 800618 reg | 761210 |
| Minnesota | Scott County | Savage, city of | 270433 | 740424 emerg., 800618 reg | 740329 |
| Minnesota | Washington County | St. Paul Park, city of | 270514 | 740911 emerg., 800618 reg | 740329 |
| North Carolina | Watauga County | Watauga county* | 370251 | 750717 emerg., 800618 reg | 750110 |
| New Mexico | Quay County | San Jon, village of | 350047 | 750820 emerg., 800618 reg | 741122 |
| New York | Monroe County | Brighton, town of | 360410 | 730126 emerg., 800618 reg | 740531 |
| New York | Niagara County | Lewiston, town of | 360502 | 740327 emerg., 800618 reg | 740412 |
| New York | Westchester County | New Rochelle, city of | 360922 | 730427 emerg., 800618 reg | 731228 |
| New York | Rensselaer County | North Greenbush, town of | 361164 | 770217 emerg., 800618 reg | 751003 |
| New York | Westchester County | Scarsdale, village of | 360932 | 730425 emerg., 800618 reg | 731228 |
| Ohio | Lorain County | Oberlin, city of | 390353 | 740825 emerg., 800618 reg | 740109 |
| Ohio | Lorain County | Sheffield, village of | 390354 | 750703 emerg., 800618 reg | 740621 |
| Ohio | Sandusky County | Woodville, village of | 390485 | 751121 emerg., 800618 reg | 740315 |
| Oregon | Clackamas County | Milwaukie, city of | 410019 | 720519 emerg., 800618 reg | 740405 |
| Pennsylvania | Allegheny County | Cheswick, borough of | 420022 | 750730 emerg., 800618 reg | 740201 |
| Pennsylvania | Luzerne County | Duryea, borough of | 420603 | 730112 emerg., 800618 reg | 731228 |
| Pennsylvania | Allegheny County | McCandless, township of | 421061 | 741004 emerg., 800618 reg | 740920 |
| Pennsylvania | Bradford County | South Waverly, borough of | 420176 | 740911 emerg., 800618 reg | 740109 |
| Pennsylvania | Blair County | Tyrone, township of | 421365 | 751217 emerg., 800618 reg | 741213 |
| South Carolina | York County | Fort Mill, town of | 450195 | 750610 emerg., 800618 reg | 740531 |
| South Dakota | Yankton County | Mission Hill, town of | 460091 | 751128 emerg., 800618 reg | 741213 |
| Texas | Collin County | Frisco, city of | 480134 | 751007 emerg., 800618 reg | 750124 |
| Texas | Collin County | McKinney, city of | 480135 | 750409 emerg., 800618 reg | 740524 |
| Vermont | Caledonia County | Lyndon, town of | 500028 | 740320 emerg., 800618 reg | 0 |
| Wahington | Cowlitz County | Castle Rock, city of | 530277 | 750508 emerg., 800618 reg | 760716 |
| Ohio | Ottawa County | Clay Center, village of | 390675 | 790327 emerg., 800620 reg | 0 |
| Iowa | Wapello County | Agency, city of | 190539 | 760902 emerg., 800630 reg | 750905 |
| Iowa | Muscatine County | Atalissa, city of | 190211 | 751022 emerg., 800630 reg | 741106 |
| Iowa | Lyon County | Larchwood, city of | 190605 | 780630 emerg., 800630 reg | 750629 |
| Missouri | Cass County | Creighton, city of | 290063 | 790803 emerg., 800630 reg | 770513 |
| Alabama | Coffee County | Enterprise, city of | 010045 | 750221 emerg., 800702 reg | 740726 |
| Alabama | Geneva County | Geneva, city of | 010065 | 750306 emerg., 800702 reg | 740329 |
| Alabama | Talladega County | Talladega County * | 010297 | 751003 emerg., 800702 reg | 741213 |
| Arkansas | Union County | Calion, city of | 050206 | 741025 emerg., 800702 reg | 740412 |
| Arkansas | Clay County | Corning, city of | 050030 | 741101 emerg., 800702 reg | 741012 |
| Arkansas | Union County | Smackover, city of | 050209 | 750513 emerg., 800702 reg | 731026 |
| Arkansas | Washington County | West Fork, town of | 050220 | 741203 emerg., 800702 reg | 740628 |
| California | Los Angeles County | La Mirada, city of | 060131 | 750807 emerg., 800702 reg | 740628 |
| Connecticut | New London County | Montville, town of | 090089 | 731127 emerg., 800702 reg | 741018 |
| Connecticut | Fairfield County | Westport, town of | 090019 | 711006 emerg., 800702 reg | 740719 |
| Delaware | Kent County | Bowers, town of | 100002 | 740613 emerg., 800702 reg | 740809 |
| Delaware | Sussex County | Slaughter Beach, town of | 100050 | 740528 emerg., 800702 reg | 741115 |
| Florida | Seminole County | Casselberry, city of | 120291 | 740911 emerg., 800702 reg | 740201 |
| Illinois | Madison County | Alton, city of | 170437 | 740325 emerg., 800702 reg | 740306 |
| Illinois | Madison County | Bethalto, village of | 170436 | 740612 emerg., 800702 reg | 740503 |
| Illinois | Cook County | Blue Island, city of | 170064 | 750110 emerg., 800702 reg | 740322 |
| Illinois | McHenry County | Cary, village of | 170475 | 741127 emerg., 800702 reg | 740412 |
| Illinois | Du Page County | Clarendon Hills, village of | 170203 | 730829 emerg., 800702 reg | 740306 |
| Louisiana | Ouachita Parish | Ouachita Parish * | 220135 | 740129 emerg., 800702 reg | 740913 |
| Massachusetts | Franklin County | Bernardston, town of | 250110 | 780204 emerg., 800702 reg | 761210 |
| Massachusetts | Franklin County | Charlemont, town of | 250112 | 750701 emerg., 800702 reg | 740802 |
| Massachusetts | Franklin County | Colrain, town of | 250113 | 750903 emerg., 800702 reg | 740726 |
| Massachusetts | Essex County | Danvers, town of | 250079 | 750722 emerg., 800702 reg | 740726 |
| Massachusetts | Franklin County | Deerfield, town of | 250115 | 780420 emerg., 800702 reg | 740913 |
| Massachusetts | Middlesex County | Dracut, town of | 250190 | 740506 emerg., 800702 reg | 740809 |
| Massachusetts | Dukes County | Edgartown, town of | 250089 | 750707 emerg., 800702 reg | 740531 |
| Massachusetts | Franklin County | Greenfield, town of | 250118 | 750123 emerg., 800702 reg | 740913 |
| Massachusetts | Essex County | Methuen, town of | 250083 | 740826 emerg., 800702 reg | 740830 |
| Massachusetts | Norfolk County | Millis, town of | 250244 | 780302 emerg., 800702 reg | 740719 |
| Massachusetts | Dukes County | Oak Bluffs, town of | 250072 | 740206 emerg., 800702 reg | 770719 |
| Massachusetts | Bristol County | Raynham, town of | 250061 | 750823 emerg., 800702 reg | 740809 |
| Massachusetts | Franklin County | Shelburne, town of | 250127 | 750722 emerg., 800702 reg | 740268 |
| Massachusetts | Middlesex County | Weston, town of | 250226 | 750730 emerg., 800702 reg | 740726 |
| Massachusetts | Middlesex County | Woburn, city of | 250229 | 750626 emerg., 800702 reg | 770628 |
| Maine | Franklin County | Strong, town of | 230061 | 750821 emerg., 800702 reg | 740614 |
| Michigan | Genesee County | Grand Blanc, city of | 260255 | 740520 emerg., 800702 reg | 750711 |
| Michigan | Genesee County | Montrose, township of | 260099 | 750729 emerg., 800702 reg | 750627 |
| Minnesota | Washington County | Newport, city of | 270510 | 740215 emerg., 800702 reg | 740322 |
| New Mexico | Santa Fe County | Santa Fe, city of | 350070 | 750213 emerg., 800702 reg | 770510 |
| New York | Steuben County | Erwin town of | 360774 | 730323 emerg., 800702 reg | 731123 |
| New York | Erie County | Lackawanna, city of | 360247 | 740117 emerg., 800702 reg | 740628 |
| Ohio | Cuyahoga County | Chagrin Falls, village of | 390103 | 750729 emerg., 800702 reg | 740315 |
| Ohio | Summit County | Clinton, village of | 390525 | 750809 emerg., 800702 reg | 740206 |
| Ohio | Lorain County | Elyria, city of | 390350 | 750328 emerg., 800702 reg | 740503 |
| Ohio | Trumbull County | Girard, city of | 390536 | 750827 emerg., 800702 reg | 740123 |
| Ohio | Lorain County | Grafton, village of | 390614 | 790807 emerg., 800702 reg | 741220 |
| Oklahoma | Jackson County | Altus, city of | 400072 | 750220 emerg., 800702 reg | 740628 |
| Oklahoma | Custer County | Clinton, city of | 400054 | 741125 emerg., 800702 reg | 740123 |
| Oklahoma | Creek County | Drumright, city of | 400052 | 750612 emerg., 800702 reg | 731123 |
| Oklahoma | Muskogee County | Muskogee, city of | 400125 | 750422 emerg., 800702 reg | 740322 |
| Oklahoma | Canadian County | Mustang, city of | 400409 | 750206 emerg., 800702 reg | 760409 |
| Oklahoma | Kay County | Ponca City, city of | 400080 | 740306 emerg., 800702 reg | 740201 |
| Oklahoma | Potawatomie County | Shawnee, city of | 400178 | 750402 emerg., 800702 reg | 741227 |
| Pennsylvania | Bucks County | Langhorne, borough of | 421074 | 750124 emerg., 800702 reg | 740531 |
| Pennsylvania | Berks County | Mohnton, borough of | 420142 | 740123 emerg., 800702 reg | 731228 |
| Pennsylvania | York County | Newberry, township of | 422226 | 740719 emerg., 800702 reg | 741018 |
| Pennsylvania | Allegheny County | O'Hara, township of | 421088 | 741203 emerg., 800702 reg | 740920 |
| Pennsylvania | Tioga County | Putnam, township of | 420824 | 730829 emerg., 800702 reg | 740201 |
| Pennsylvania | Allegheny County | Rankin, borough of | 420067 | 750210 emerg., 800702 reg | 740315 |
| Pennsylvania | Tioga County | Richmond, township of | 420825 | 730801 emerg., 800702 reg | 740503 |

| State | County | Location | Community No. | Effective date of authorization of sale of flood insurance for area | Hazard area identified |
|---|---|---|---|---|---|
| Pennsylvania | Luzerne County | Sugarloaf, township of | 420997 | 731217 emerg., 800702 reg | 740503 |
| Pennsylvania | Montgomery County | Towamencin, township of | 422236 | 740621 emerg., 800702 reg | 750131 |
| South Carolina | Orangeburg County | Holly Hill, town of | 450163 | 760819 emerg., 800702 reg | 740607 |
| Tennessee | Williamson County | Franklin, city of | 470206 | 740925 emerg., 800702 reg | 740531 |
| Tennessee | Franklin County | Winchester, city of | 470056 | 750509 emerg., 800702 reg | 740614 |
| Texas | Bexar County | Selma, city of | 480046 | 751001 emerg., 800702 reg | 741206 |
| Virginia | Wise County | Coeburn, town of | 510716 | 750306 emerg., 800702 reg | 740510 |
| Vermont | Windsor County | Bridgewater, town of | 500144 | 751113 emerg., 800702 reg | 740616 |
| Vermont | Rutland County | Poultney, town of | 500099 | 750724 emerg., 800702 reg | 740628 |
| Vermont | Rutland County | Poultney, village to | 500266 | 750805 emerg., 800702 reg | 741206 |
| Vermont | Lamoille County | Stowe, town of | 500066 | 750805 emerg., 800702 reg | 740721 |
| California | Amador County | Ione, city of | 060016 | 750916 emerg., 800708 reg | 740524 |
| Utah | Box Elder County | Mantua, town of | 490009 | 750820 emerg., 800708 reg | 750117 |
| Maine | Cumberland County | Baldwin, town of | 230200 | 0 emerg., 800714 reg | 750214 |
| Utah | Box Elder County | Corinne, city of | 490197 | 770928 emerg., 800715 reg | 760625 |

(National Flood Insurance Act of 1968 (title XII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 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)

Issued: August 4, 1980.

Gloria M. Jimenez,

*Federal Insurance Administrator.*

[FR Doc. 80-24987 Filed 8-19-80; 8:45 am]

BILLING CODE 4210-23-M

## 44 CFR Part 64

**[Docket No. FEMA 5878]**

## 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 that 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 elasped 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] |
|---|---|---|---|---|---|---|
| Alaska | Unorganized borough | Valdez, city of | 020094B | May 13, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 1, 1974 Apr. 8, 1977 | Sept. 3, 1980 |
| Arkansas | Fulton | Mammoth Springs, city of | 050082B | Nov. 29, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Mar. 15, 1974 Oct. 17, 1975 | Do. |
| Colorado | Douglas | Douglas County, unincorporated areas. | 080049B | Aug. 28, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Feb. 7, 1975 Sept. 6, 1977 | Do. |
| Florida | Brevard | Palm Bay, city of | 120404A | July 31, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | ..... | Do. |
| Hawaii | Honolulu | Honolulu, city and county | 150001A | June 5, 1970, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 4, 1971 | Do. |

| State | County | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Special flood hazard area identified | Date [2] |
|---|---|---|---|---|---|---|
| Idaho | Canyon | Caldwell, city of | 160036B | May 2, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 19, 1976 | Do. |
| Do | do | Middleton, city of | 160037B | May 22, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 2, 1973 July 30, 1976 | Do. |
| Illinois | Cook | Countryside, city of | 170079B | Oct. 29, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Apr. 5, 1974 Feb. 6, 1976 | Do. |
| Do | Lake | Old Mill Creek, village of | 170365B | Aug. 8, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Aug. 30, 1974 | Do. |
| Kentucky | Daviess | Daviess County, unincorporated areas. | 210052A | Dec. 12, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Dec. 6, 1974 | Do. |
| Louisiana | Claiborne Parish | Homer, town of | 220052B | Oct. 9, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Dec. 28, 1973 Nov. 14, 1975 | Do. |
| Do | St. Mary Parish | St. Mary Parish, unincorporated areas. | 220192A | Apr. 6, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | ——— | Do. |
| Maryland | Worcester | Pocomoke City, city of | 240084C | Nov. 27, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Apr. 5, 1974 Dec. 12, 1975 Apr. 16, 1976 | Do. |
| Michigan | Kent | East Grand Rapids, city of | 260105B | May 21, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | May 17, 1974 Sept. 26, 1975 | Do. |
| Minnesota | Hennepin | Medina city of | 270171B | July 18, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 28, 1974 Sept. 26, 1975 | Do. |
| Do | Goodhue | Zumbrota, city of | 270148B | June 23, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | May 24, 1974 Oct. 31, 1975 | Do. |
| Mississippi | Washington | Washington County, unincorporated areas. | 280177B | May 4, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Oct. 18, 1974 Dec. 16, 1977 | Do. |
| Nebraska | Jefferson | Fairbury city of | 310120B | Aug. 28, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Aug. 2, 1974 Jan. 9, 1976 | Do. |
| New York | Chemung | Chemung, town of | 360149A | Apr. 11, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Oct. 1, 1976 | Do. |
| Do | Monroe | Scottsville, village of | 360434B | July 23, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Mar. 8, 1974 Dec. 5, 1975 | Do. |
| North Carolina | Catawba | Catawba County unincorporated areas. | 370050B | Oct. 24, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 10, 1977 | Do. |
| Do | do | Catawba, town of | 370052B | July 8, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 28, 1974 May 21, 1976 | Do. |
| Do | do | Conover, town of | 370053B | Apr. 15, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 21, 1974 Aug. 6, 1976 | Do. |
| Do | do | Long View, town of | 370055B | June 17, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 28, 1974 June 11, 1976 | Do. |
| Do | do | Maiden, town of | 370056B | May 8, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Sept. 20, 1974 June 11, 1976 | Do. |
| Do | do | Newton, town of | 370057B | Mar. 25, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 28, 1974 Apr. 2, 1976 | Do. |
| Oregon | Lincoln | Lincoln County unincorporated areas. | 410129B | Feb. 15, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Jan. 17, 1975 Aug. 9, 1977 | Do. |
| Pennsylvania | Luzerne | Black Creek, township of | 420596B | Mar. 9, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | May 31, 1974 May 14, 1976 | Do. |
| Do | Allegheny | Blawnox, borough of | 420013B | Nov. 1, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 14, 1974 May 7, 1976 | Do. |
| Do | McKean | Eldred, borough of | 420666B | Aug. 1, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Apr. 12, 1974 May 7, 1976 | Do. |
| Do | do | Eldred, township of | 421854A | Aug. 21, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 15, 1974 | Do. |
| Do | Bucks | Haycock, township of | 421127B | July 28, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | July 25, 1974 Dec. 30, 1977 | Do. |
| Do | Luzerne | Lake, township of | 421833A | Oct. 24, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 22, 1974 | Do. |
| Do | Tioga | Lawrence, township of | 421006B | Apr. 16, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Mar. 8, 1974 Dec. 24, 1976 | Do. |
| Do | Dauphin | Lykens, borough of | 420386B | Mar. 9, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Nov. 2, 1973 May 7, 1976 | Do. |
| Do | Tioga | Morris, township of | 421155B | Apr. 15, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | 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 | Berks | Robeson, township of | 420146C | Dec. 29, 1972, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Apr. 5, 1974 June 18, 1976 | Do. |
| Tennessee | Hamilton | Chattanooga, city of | 470072A | Mar. 3, 1972, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | June 14, 1974 | Do. |
| Vermont | Chittenden | Charlotte, town of | 500309A | July 24, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Jan. 3, 1975 | Do. |
| Do | Franklin | Richford, village of | 500057B | Aug. 20, 1974, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Mar. 15, 1974 Feb. 11, 1977 | Do. |
| West Virginia | Harrison | Anmore, town of | 540054B | Apr. 7, 1975, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | July 26, 1974 Mar. 26, 1976 | Do. |
| Wisconsin | Kewaunee | Kewaunee County unincorporated areas. | 550212B | June 11, 1973, emergency, Sept. 3, 1980 regular, Sept. 3, 1980, suspended. | Apr. 21, 1978 | 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)

Issued: August 7, 1980.

Gloria M. Jimenez,

*Federal Insurance Administrator.*

[FR Doc. 80-24988 Filed 8-19-80; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 65

**[Docket No. FEMA 5877]**

## List of Communities With Special Hazard Areas Under the National Flood Insurance Program

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

**EFFECTIVE DATES:** The effective date shown at the top right of the table or September 19, 1980, whichever is later.

**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 Street, SW., Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:** The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin September 19, 1980, or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin September 19, 1980, or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 or Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

**§ 65.3 List of communities with special hazard areas (FHBMs in effect).**

BILLING CODE 6718-03-M

EFFECTIVE DATE August 1, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FIRM | 9 Status of FIRM | 10 Previous Map Dates FIRM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| IL | 170538 | Perry County (Uninc. Area) | Index 0005B 0006B 0008B | I | FL | B | 4 | 3 | N/A | 12/13/74 5/26/78 | N/A | 9 10 16 | N/A | N/A | Victor Provatore, Chairman County Board of Commissioners P.O. Box 438 Courthouse Pickneyville, IL 62274 Phone: (618) 357-8282 |
| PA | 421460 | Township of Benner (Centre Co.) | Index 0001A 0002A 0003A | I | FL | B | 1 | 3 | N/A | 11/ 1/74 | N/A | 9 10 16 | N/A | N/A | Richard D. Meyer, Chairman Twp. Board of Supervisors Municipal Bldg. R.D. 4, Box 128-B Bellefonte, PA 16823 Phone: (814) 355-1419 |
| PA | 421437 | Township of Clearfield (Cambria Co.) | Index 0001A 0002A 0003A | I | FL | B | 1 | 3 | N/A | 7/18/75 | N/A | 9 10 16 | N/A | N/A | Patrick J. Sheehan, Chairman Twp. Board of Supervisors R.D. 1, Box 138 Patton, PA 16668 Phone: (814) 674-8633 |
| PA | 422518 | Township of Middlecreek (Somerset Co.) | Index 0002A 0003A 0004A | I | FL | B | 1 | 3 | N/A | 1/3/75 | N/A | 9 10 16 | N/A | N/A | Maurice J. Saylor, Chairman Twp. Board of Supervisors R.D. 2 Rockwood, PA 15557 Phone: (814) 352-4066 |

EFFECTIVE DATE R-1-80

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FIRM | 9 Status of FIRM | 10 Previous Map Dates FIRM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| NC | 370204 | T. of Red Springs (Robeson Co.) | 0001B | I | FL | B | 1 | 3 | | 4/1/77 | | 10 | N/A | N/A | Earle Watson, Mayor 217 South Main Street Red Springs, NC 28377 (919) 843-5241 |
| TN | 470087 | C. of Brownsville (Haywood Co.) | 0005B | I | FL | B | 1 | 3 | | 5/3/74 4/23/76 | | 8 9 10 | N/A | N/A | Joseph G. Taylor P.O. Box 375 Brownsville, TN 38012 (901) 772-1212 |
| TN | 470066 | C. Minor Hill (Giles Co.) | 0001A 0003A | I | FL | B | 4 | 3 | | 7/2/76 | | 10 | N/A | N/A | Harry Williams, Mayor P.O. Box 69 Minor Hill, TN 38473 (615) 565-3113 |
| TN | 470121 | C. of Lewisburg (Marshall Co.) | 0005B | I | FL | B | 4 | 3 | | 3/1/74 9/6/76 | | 8 10 | N/A | N/A | J.A. Biggs, Mayor Rt. 1, 505 Ellington Pkwy. Lewisburg, TN 37091 |
| TN | 470060 | T. of Milan (Gibson Co.) | 0001B 0002B | I | FL | B | 1 | 3 | | 5/24/74 8/27/76 | | 8 9 10 | N/A | N/A | Herb Davis, Mayor City Hall Milan, TN 38358 (901) 686-3301 |
| TN | 470190 | T. of Guilt Edge (Tipton Co.) | 0005B 0010B | I | FL | B | 4 | 3 | | 9/13/74 7/2/76 | | 10 | N/A | N/A | C.C. Alsbrooks, Mayor Rt. 2 Brighton, TN 38011 (901) 476-2438 |
| TN | 470009 | T. of War Trace (Bedford Co.) | 0001C | I | FL | B | 4 | 3 | | 6/14/74 4/23/76 9/17/76 | | 10 | N/A | N/A | Mr. Roscoe Stephens, Mayor P.O. Box 158 Wartrace, TN 37183 (615) 389-6144 |

EFFECTIVE DATE August 5, 1980

| 1 STATE | 2 IDENT. NUMBER | 3 COMMUNITY NAME & COUNTY NAME | 4 PANELS PRINTED (# AND SUFFIX) | 5 INLAND/ COASTAL | 6 HAZARD | 7 60.3 CODE | 8 PROGRAM STATUS | 9 STATUS OF FHBM | 9 STATUS OF FIRM | 10 PREVIOUS MAP DATES FHBM | 10 PREVIOUS MAP DATES FIRM | 11 REVISION CODE(S) | 12 RESCISSION | 13 FLOODWAYS PANELS PRINTED | 14 LOCATION OF MAP REPOSITORY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MO | 290837 | Scott County (Unincorporated Area) | 0001A 0002A 0003A 0004A 0005A 0006A | I | FL | B | 1 | 2 | N/A | N/A | N/A | N/A | N/A | N/A | The Honorable Louie Hirschowitz Presiding Judge Scott County Courthouse Benton, MO 63736 (314) 545-3549 |

EFFECTIVE DATE August 8, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 421407 | Twp. of Stevens (Bradford Co.) | 0001B | I | FL | B | 4 | 3 | 1 | 11/ 1/74 6/25/76 | N/A | 9 10 16 | N/A | N/A | Edward Marshall, Chairman Twp. Board of Supervisors Rt. 1 Stevensville, PA 18845 Phone: Unlisted |
| PA | 421663 | Twp. of Taylor (Fulton Co.) | Index 0001B 0002B | I | FL | B | 1 | 3 | 1 | 12/20/74 4/30/76 | N/A | 9 10 16 | N/A | N/A | Gerald Hann, Sr., Chairman Twp. Board of Supervisors Municipal Building Box 627 Hustontown, PA 17229 Phone: (717) 987-3264 |
| PA | 422106 | Twp. of West Buffalo (Union Co.) | Index 0001A 0002A 0003A | I | FL | B | 1 | 3 | 1 | 11/ 1/74 | N/A | 9 10 16 | N/A | N/A | John R. Englehart, Chairman Twp. Board of Supervisors Municipal Building Red Bank Schoolhouse R.D. 2 Mifflinburg, PA 17844 Phone: (717) 966-1346 |
| VT | 500295 | Town of Norwich (Windsor Co.) | 0010 B 0015 B 0020 B | I | FL | B | 1 | 3 | 1 | 10/18/74 9/6/77 | | 9 10 | N/A | N/A | Charles Hodgdon, Chairman Board of Selectmen Town of Norwich Norwich, Vermont 05055 (802) 649-1419 |

EFFECTIVE DATE August 8, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (& and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| IL | 170927 | Jackson County (Uninc. Area) | Index 0006B 0003C | I | FL | B | 4 | 3 | / | 7/14/78 6/ 8/79 | N/A | 9 10 16 | N/A | N/A | William G. Kelley Chairman, County Board Jackson County Courthouse Murphysboro, IL 62966 Phone: (618) 457-8976 (work |
| MI | 260699 | Village of Elk Rapids (Antrim Co.) | 0001B | I | FL | B | 1 | 3 | / | 3/10/78 | N/A | 9 16 | N/A | N/A | Ted F. Miller, President 131 River Street Elk Rapids, MI 49629 Phone: (616) 264-9274 |
| OH | 390263B | Village of Florida (Henry Co.) | Index 01 | I | FL | B | 1 | 3 | / | 6/ 9/74 5/21/76 | N/A | 9 10 16 | N/A | N/A | Kay Gessner, Mayor Village Hall Napoleon, OH 43545 Phone: (419) 762-5201 |
| PA | 421687 | Twp. of Clay (Huntingdon Co.) | Index 0001A 0002A | I | FL | B | 1 | 3 | / | 12/13/74 | N/A | 9 10 16 | N/A | N/A | Charles Bard, Chairman Twp. Board of Supervisors R.D. 1 Three Springs, PA 17264 Phone: (814) 448-3634 |

EFFECTIVE DATE August 12, 1980

| 1 STATE | 2 IDENT. NUMBER | 3 COMMUNITY NAME & COUNTY NAME | 4 PANELS PRINTED (# AND SUFFIX) | 5 INLAND/ COASTAL | 6 HAZARD | 7 60.3. CODE | 8 PROGRAM STATUS | 9 STATUS OF FHBM | 9 STATUS OF FIRM | 10 PREVIOUS MAP DATES FHBM | 10 PREVIOUS MAP DATES FIRM | 11 REVISION CODE(S) | 12 RESCISSION | 13 FLOODWAYS PANELS PRINTED | 14 LOCATION OF MAP REPOSITORY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| TX | 481002 | Shackelford County (Unincorporated Area) | 0001A 0002A 0003A 0004A 0005A 0006A 0007A 0008A 0009A 0010A 0011A 0012A | I | FL | B | 1 | 2 | N/A | N/A | N/A | N/A | N/A | N/A | The Honorable Ernest B. Fincher County Judge Shackelford County Courthouse Albany, TX 76430 (915) 762-2232 |

EFFECTIVE DATE 8/15/80

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AL | 010040 | C. Jackson (Clarke Co.) | 0002 A | I | FL | B | 1 | 3 | I | 6/27/75 | | 8<br>9<br>10 | N/A | N/A | |
| AL | 010360 | T. Pisgah (Jackson Co.) | 0001A | I | FL | B | 1 | 3 | I | 3/12/76 | | 9<br>10 | N/A | N/A | |

EFFECTIVE DATE August 15, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 421665 | Township of Todd (Fulton Co.) | Index 0001A | I | FL | B | 1 | 3 | N/A | 1/17/75 | N/A | 9<br>10<br>16 | N/A | N/A | Reed C. Englert, Chairman Twp. Board of Supervisors Star Route Box 285 McConnellsburg, PA 17233 Phone: (717) 987-3263 |
| PA | 421666 | Township of Wells (Fulton Co.) | Index 0001A 0002A | I | FL | B | 1 | 3 | N/A | 12/13/74 | N/A | 9<br>10<br>16 | N/A | N/A | Clifford Foreman, Chairman Twp. Board of Supervisors Wells Tannery, PA 16691 Phone: (814) 685-3662 |

EFFECTIVE DATE August 15, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(#) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 421025 | Township of Penn (York Co.) | Index 0002B | I | FL | B | 1 | 3 | N/A | 5/17/74 1/30/76 | N/A | 9 10 16 | N/A | N/A | Eugene Fuhman, President Community Twp. Board of Commissioners Municipal Building 1016 York Street Hanover, PA 17331 Phone: (717) 632-7366 |
| PA | 421446 | Township of Summerhill (Cambria Co.) | Index 0001A | I | FL | B | 1 | 3 | N/A | 11/29/74 | N/A | 9 10 16 | N/A | N/A | William Evancic, Chairman Twp. Board of Supervisors R.D. 1 Sidman, PA 15955 Phone: (814) 487-7351 |
| PA | 421664 | Township of Thompson (Fulton Co.) | Index 0001A 0003A | I | FL | B | 1 | 3 | N/A | 12/13/74 | N/A | 9 10 16 | N/A | N/A | Bruce Bivens, Chairman Twp. Board of Supervisors Star Route 1 Municipal Building Big Cove Tannery, PA 17212 Phone: (717) 294-3305 |

EFFECTIVE DATE August 15, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(#) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 421685 | Township of Carbon (Huntingdon Co.) | Index 0001A | I | FL | B | 1 | 3 | N/A | 1/10/75 | N/A | 9 10 16 | N/A | N/A | Donald Hamilton, Chairman Twp. Board of Supervisors R.D. 1 Saxton, PA 16678 Phone: (814) 635-3212 |
| PA | 422116 | Township of Columbus (Warren Co.) | Index 0001A 0002A 0003A | I | FL | B | 1 | 3 | N/A | 1/17/75 | N/A | 9 10 16 | N/A | N/A | John Brundage, Chairman Twp. Board of Supervisors R.D. 2 Corry, PA 16407 Phone: (814) 664-7164 |
| PA | 421890 | Township of Middle Smithfield (Monroe Co.) | Index 0001A 0002A 0003A 0004A | I | FL | B | 1 | 3 | N/A | 12/ 6/74 | N/A | 9 10 16 | N/A | N/A | Thomas F. Bonser, Chairman Twp. Board of Supervisors R.D. 1 Municipal Building East Stroudsburg, PA 18301 Phone: (717) 588-6588 |
| PA | 422521 | Township of Paint (Somerset Co.) | Index 0001A 0002A 0003A 0004A | I | FL | B | 1 | 3 | N/A | 12/27/74 | N/A | 9 10 16 | N/A | N/A | Ross Weaver, Chairman Twp. Board of Supervisors 400 Rear Hayes Street Twp. Building Windber, PA 15963 Phone: (814) 467-9788 |

EFFECTIVE DATE August 19, 1980

| 1 STATE | 2 IDENT. NUMBER | 3 COMMUNITY NAME & COUNTY NAME | 4 PANELS PRINTED (# AND SUFFIX) | 5 INLAND/ COASTAL | 6 HAZARD | 7 60.3 CODE | 8 PROGRAM STATUS | 9 STATUS OF FHBM | 9 STATUS OF FIRM | 10 PREVIOUS MAP DATES FHBM | 10 PREVIOUS MAP DATES FIRM | 11 REVISION CODE(S) | 12 RESCISSION | 13 FLOODWAYS PANELS PRINTED | 14 LOCATION OF MAP REPOSITORY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| TX | 480456 | McLennan County (Unincorporated Area) | 0001A<br>0002A<br>0003A<br>0004A<br>0005A<br>0006A<br>0007A<br>0008A<br>0009A<br>0010A<br>0011A<br>0012A<br>0013A<br>0014A | I | FL | B | 4 | 2 | N/A | N/A | N/A | N/A | N/A | N/A | The Honorable Bob L. Thomas<br>County Judge<br>McLennan County Courthouse<br>214 County Courthouse<br>Waco, TX 76703<br>(817) 756-7171 |

EFFECTIVE DATE August 22, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 422424 | Twp. of Fannett (Franklin Co.) | Index<br>0001A<br>0004A<br>0006A | I | FL | B | 1 | 3 | I | 2/ 7/75 | N/A | 9<br>10<br>16 | N/A | N/A | Wendell Campbell, Chairman<br>Twp. Board of Supervisors<br>Spring Run, PA 17262<br>Phone: (717) 349-7222 |
| PA | 421809 | Twp. of Heidelberg (Lehigh Co.) | Index<br>0001B<br>0002B | I | FL | B | 1 | 3 | I | 12/27/74<br>10/17/75 | N/A | 9<br>10<br>16 | N/A | N/A | Rodney Schlauch, Sr.<br>Chairman<br>Twp. Board of Supervisors<br>R.D. 2<br>Slatington, PA 18080<br>Phone: (215) 767-4892 |
| PA | 422098 | Twp. of Liberty (Tioga Co.) | Index<br>0003A<br>0004A | I | FL | B | 1 | 3 | I | 4/ 4/75 | N/A | 9<br>10<br>16 | N/A | N/A | Robert E. Raker, Chairman<br>Twp. Board of Supervisors<br>R.D. Sebring<br>Liberty, PA 16930<br>Phone: (717) 324-5281 |
| PA | 422520 | Twp. of Northampton (Somerset Co.) | Index<br>0001A<br>0002A<br>0003A<br>0004A | I | FL | B | 1 | 3 | I | 1/ 3/75 | N/A | 9<br>10<br>16 | N/A | N/A | Melvin C. Cook, Chairman<br>Twp. Board of Supervisors<br>R.D. 1<br>Glencoe, PA 15543<br>Phone: (814) 267-5479 |

EFFECTIVE DATE August 22, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (D and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PA | 421403 | Twp. of Pike (Bradford Co.) | Index 0001B 0002B | I | FL | B | 4 | 3 | I | 11/ 1/74 8/20/76 | N/A | 9 10 16 | N/A | N/A | Kendall Jenner, Chairman Twp. Board of Supervisors R.D. 1 Rome, PA 18837 Phone: (717) 744-2642 |
| PA | 422445 | Twp. of Pine Creek (Jefferson Co.) | Index 0001A 0002A 0003A 0004A | I | FL | B | 1 | 3 | I | 1/24/75 | N/A | 9 10 16 | N/A | N/A | Harry E. Emery, Chairman Twp. Board of Supervisors R.D. 1 Brookville, PA 15825 Phone: (814) 849-7501 |
| PA | 421799 | Twp. of Scott (Lawrence Co.) | Index 0001A 0002A | I | FL | B | 1 | 3 | I | 1/31/75 | N/A | 9 10 16 | N/A | N/A | R.J. Doloughan, Chairman Twp. Board of Supervisors R.D. 4, Box 257 New Castle, PA 16101 Phone: (412) 654-3866 |

EFFECTIVE DATE August 26, 1980

| 1 STATE | 2 IDENT. NUMBER | 3 COMMUNITY NAME & COUNTY NAME | 4 PANELS PRINTED (M AND SUFFIX) | 5 INLAND/ COASTAL | 6 HAZARD | 7 60.3 CODE | 8 PROGRAM STATUS | 9 STATUS OF FHBM | 9 STATUS OF FIRM | 10 PREVIOUS MAP DATES FHBM | 10 PREVIOUS MAP DATES FIRM | 11 REVISION CODE(S) | 12 RESCISSION | 13 FLOODWAYS PANELS PRINTED | 14 LOCATION OF MAP REPOSITORY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AZ | 040116 | City of Lake Havasu City (Mohave County) | 0001A 0002A 0003A 0004A | I | FL | B | 1 | 2 | I | N/A | N/A | N/A | N/A | N/A | The Honorable Gene Pinto Mayor, City of Lake Havasu City 1795 Civic Center Boulevard P.O. Box 70 Lake Havasu City, AZ 86403 (602) 855-1201 |
| MO | 290781 | Mississippi County (Unincorporated Area) | 0001A 0002A 0003A 0004A 0005A 0006A 0007A | I | FL | B | 1 | 2 | I | N/A | N/A | 20 | N/A | N/A | The Honorable Hunter Raffety Presiding County Judge Mississippi County Courthouse Charleston, MO 63834 (314) 683-2146 |
| MO | 290547 | City of Napoleon (Lafayette County) | 0001A | I | FL | B | 4 | 2 | I | N/A | N/A | 20 | N/A | N/A | The Honorable Ryland Potter Mayor, City of Napoleon City Hall Napoleon, MO 64074 (816) 934-2779 |

EFFECTIVE DATE August 29, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AL | 010197 | C. Childersburg (Talladega Co.) | 0005 B | I | FL | B | 1 | 3 | 1 | 6/14/74 | N/A | 9,10 | N/A | N/A | Robert S. Linburgh, Mayor City of Childersburg 118 Sixth Avenue, S.W. Childersburg, Alabama 35044 |
| NC | 370259 | T. Wilkesboro (Wilkes Co.) | 0005 B | I | FL | B | .1 | 3 | 1 | 6/14/74 7/9/76 | N/A | 8,10 | N/A | N/A | Fidell F. Frazier, Mayor Town of Wilkesboro 100 West Street Wilkesboro, North Carolina 28697 (919) 838-3951 |
| TN | 470132 | C. Selmer (McNairy Co.) | 0005 B | I | FL | B | 1 | 3 | 1 | 4/5/74 4/2/76 | N/A | 9, 10 | N/A | N/A | Billy Joe Glover, Mayor City of Selmer 144 Second Street Selmer, Tennessee 38375 (901) 645-3241 |
| TN | 470067 | C. Pulaski (Giles Co.) | 0005B | I | FL | B | 1 | 3 | 1 | 5/24/74 1/30/76 | N/A | 8,10 | N/A | N/A | Stacey A. Garner, Mayor City of Pulaski 203 South First Street Pulaski, Tennessee 38478 (615) 363-2516 |
| TN | 470336 | C of Michie (McNairy Co.) | 0005 A | I | FL | B | 4 | 3 | 1 | 10/1/76 | N/A | 9,10 | N/A | N/A | Hayward Hunt, Alderman City of Michie P.O. Box 27 The Water Plant Michie, TN (901) 239-9857 |

EFFECTIVE DATE August 29, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (# and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of FHBM | 9 Status of FIRM | 10 Previous Map Dates FHBM | 10 Previous Map Dates FIRM | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| IL | 170899 | Franklin Co. (Uninc. Area) | Index 0001B 0004B | I | FL | B | 4 | 3 | 1 | 1/13/78 | N/A | 9 16 | N/A | N/A | Al Chiaventone, County Board Chairman Franklin County Courthouse Vinton, IL 62812 Phone: (618) 438-3221 |
| MI | 260118 | Twp. of Hamburg (Livingston Co.) | Index 0001B 0002B | I | FL | B | 1 | 3 | 1 | 7/19/74 1/21/77 | N/A | 9 10 16 | N/A | N/A | Donald DeWolf, Township Supervisor Township Hall 7209 Stone Street Hamburg, MI 48139 Phone: (313) 231-1000 |
| PA | 421727 | Twp. of Gaskill (Jefferson Co.) | Index 0001A 0002A | I | FL | B | 1 | 3 | 1 | 12/12/74 | N/A | 9 10 16 | N/A | N/A | Dale Brooks, Chairman Twp. Board of Supervisors R.D. 2, Box 263 Punxsutawney, PA 15767 Phone: (814) 427-2220 |
| PA | 421977 | Twp. of Genesee (Potter Co.) | Index 0001A 0002A | I | FL | B | 1 | 3 | 1 | 4/ 4/75 | N/A | 9 10 16 | N/A | N/A | Joseph Herbert, Chairman Twp. Board of Supervisors P.O. Box 256 Genesee, PA 16923 Phone: (814) 228-3417 |

EFFECTIVE DATE August 29, 1980

| 1 State | 2 Ident. Number | 3 Community Name County Name | 4 Panels Printed (If and Suffix) | 5 Inland/ Coastal | 6 Hazard | 7 60.3 Code | 8 Program Status | 9 Status of | | 10 Previous Map Dates | | 11 Revision Code(s) | 12 Rescission | 13 Floodways Panels Printed | 14 Location of Map Repository |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | FHBM | FIRM | FHBM | FIRM | | | | |
| PA | 422465 | Boro. of New Beaver (Lawrence Co.) | 0001A | I | FL | B | 1 | 3 | 1 | 1/31/75 | N/A | 9<br>10<br>16 | N/A | N/A | Walter Vogler, Mayor<br>Wampum, PA 16157<br>Phone: (412) 535-8825 |
| PA | 422548 | Twp. of Pleasant (Warren Co.) | Index<br>0001A<br>0002A<br>0003A | I | FL | B | 1 | 3 | 1 | 1/17/75 | N/A | 9<br>10<br>16 | N/A | N/A | Robert Wilcox, Chairman<br>Twp. Board of Supervisors<br>8 Shari Lane<br>Warren, PA 16365<br>Phone: (814) 723-5240<br>Twp. Bldg.<br>Home -(814) 723-6365 |
| PA | 421861 | Twp. of Wetmore (McKean Co.) | Index<br>0002A<br>0003A | I | FL | B | 1 | 3 | 1 | 7/25/75 | N/A | 9<br>10<br>16 | N/A | N/A | Donald Carlson, Chairman<br>Twp. Board of Supervisors<br>Municipal Building<br>Railroad Street<br>Kane, PA 16733<br>Phone: (814) 837-7490<br>Twp. Bldg.<br>Home - (814) 837-9222 |

BILLING CODE 6718-03-C

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 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)

Issued: August 4, 1980.

Gloria M. Jimenez,

*Federal Insurance Administrator.*

[FR Doc. 80-24934 Filed 8-19-80; 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 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. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the final determination of flood elevation 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 Part 67). 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**

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Alabama | City of Brownville, Jefferson County (FEMA-5817). | Unnamed Creek 45 | Just upstream of Avenue K | *520 |
| | | | Just upstream of Louisville & Nashville Railroad | *539 |
| Maps available for inspection at City Hall, 2120 Avenue K, Brownville, Alabama 35020. | | | | |
| Alabama | City of Midfield, Jefferson County (FEMA-5817). | Valley Creek | Just upstream of Midfield Road | *509 |
| | | Unnamed Creek | Just upstream of Collier Drive | *506 |
| | | | Just downstream of Short Street | *511 |
| Maps available for inspection at City Hall, 390 Midfield Street, Midfield, Alabama 35228. | | | | |
| Arizona | Peoria, City, Maricopa county (FEMA-5798). | New River | Northern Avenue | *1,080 |
| | | | 99th Avenue | *1,092 |
| | | | Mountain View Road | *1,108 |
| | | | Peoria Avenue | *1,112 |
| | | | Atchison, Topeka and Sante Fe Railroad | *1,140 |
| | | | Upstream side of Thunderbird Road | *1,155 |
| | | | 5,400' downstream of Bell Road | *1,175 |
| | | | Bell Road | *1,204 |
| | | | Union Hill Drive | *1,230 |
| | | | Beardsley Road | *1,253 |
| | | | Deer Valley Road | *1,282 |
| | | | Pinnacle Peak Road | *1,311 |
| | | Aqua Fria River | Bell Road (Extended) | *1,162 |
| | | | Beardsley Road (Extended) | *1,180 |
| | | Skunk Creek | Confluence with New River | *1,167 |
| | | | 83rd Avenue | *1,180 |
| | | | Greenway Road | *1,184 |
| | | | Arizona Canal | *1,205 |
| | | | Upstream Corporate Limits | *1,210 |
| Maps available at the City Hall Complex, 8355 West Peoria Avenue, Peoria, Arizona. | | | | |
| California | Whittier (City), Los Angeles County, FEMA-5817. | Turnbull Canyon | 50 feet northeast of the intersection of Painter Avenue and Camilla Street. | *418 |
| | | | Intersection of Sycamore Drive and Broadway | #1 |
| | | Savage Creek | 150 feet north of intersection of Vista Street and York Avenue | *380 |
| | | San Gabriel River | Area bounded between Durfee Avenue and Siphon Road | *220 |
| Maps available at City Hall, 13230 Penn Street, Whittier, California | | | | |
| Connecticut | Deep River, Town, Middlesex County (Docket No. FEMA-5725). | Deep River | Connecticut Valley Railroad (Upstream side) | *11 |
| | | | Dam No. 1 (Downstream side) | *19 |
| | | | Dam No. 1 (Upstream side) | |
| | | | State Route 9A (Upstream side) | *21 |
| | | | Dam No. 3 (Downstream side) | *29 |
| | | | Dam No. 3 (Upstream side) | *39 |
| | | | Bridge Street (Upstream side) | *41 |
| | | | Dam No. 4 (Downstream side) | *43 |
| | | | Dam No. 4 (Upstream side) | *45 |
| | | | Middle crossing of Elm Street (Upstream side) | *47 |
| | | | State Route 9 Northbound (Downstream side) | *57 |
| | | | State Route 9 Southbound (Upstream side) | *62 |
| | | | Upstream crossing of Elm Street (Upstream side) | *73 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Dam No. 5 (Downstream side) | *78 |
| | | | Dam No. 5 (Upstream side) | *83 |
| | | | Dam No. 6 (Downstream side) | *115 |
| | | | Dam No. 6 (Upstream side) | *129 |
| | | Connecticut River | Entire length within community | *11 |
| | Maps available at the Town Hall, Deep River, Connecticut. | | | |
| Connecticut | Stamford (City), Fairfield County, FEMA-5815. | Mianus River | 50 feet upstream from center of Merribrook Lane | *103 |
| | | | Intersection of river and center of Farms Road | *193 |
| | | Rippowan River | Intersection of Green Place and Renwick Street | *22 |
| | | | 100 feet upstream from center of Cold Spring Road | *41 |
| | | | Intersection of Black Road and Wire Mill Road | *137 |
| | | Noroton River | Intersection of river and center of Glen Terrace | *41 |
| | | | Intersection of river and center of Camp Avenue | *75 |
| | | Toilsome Brook | 25 feet upstream from intersection of brook and center of West Lane | *56 |
| | | Laurel Brook | 25 feet upstream from intersection of brook and center of Reservoir Lane. | *280 |
| | | Long Island Sound | Intersection of Tupper Drive and Carter Drive | *12 |
| | | | Intersection of Flying Cloud Road and Dolphin Cove Way | *12 |
| | Maps available at City Clerk's Office, 175 Atlantic Street, Stamford, Connecticut. | | | |
| Delaware | Bethel, Town, Sussex County (Docket No. FEMA-5815). | Chesapeake Bay (Broad Creek) | Entire shoreline within Bethel | *6 |
| | Maps available at the Bethel Methodist Church, Bethel, Delaware. | | | |
| Delaware | Blades, Town, Sussex County (Docket No. FEMA-5815). | Chesapeake Bay | Entire shoreline within community | *6 |
| | Maps available at the Blades Town Hall, 4th Street, Blades, Delaware. | | | |
| Delaware | Laurel, Town, Sussex County (Docket No. FEMA-5815). | Broad Creek | Downstream Corporate Limits | *6 |
| | | | Downstream side of Willow Street | *7 |
| | | | Upstream Corporate Limits | *12 |
| | | Rossakatum Branch | Confluence with Broad Creek | *7 |
| | | | Downstream West 6th Street | *9 |
| | | | Upstream West 6th Street | *12 |
| | | | Upstream Corporate Limits | *14 |
| | | | Approximately 790 feet upstream of Oaklane Drive | *15 |
| | | Georgetown Road Branch | Confluence with Records Pond | *12 |
| | | | Approximately 100 feet downstream of Delaware Avenue | *17 |
| | | | Upstream Delaware Avenue | *25 |
| | | | Upstream Corporate Limits | *27 |
| | Maps available at the Laurel Town Hall, Laurel, Delaware. | | | |
| Florida | Wakulla County, unincorporated areas, FEMA-5815. | Sopchoppy River | Interstate of River and State Highway 22 | *13 |
| | | Lost Creek | 100 feet upstream from intersection of River and State Highway 374 | *22 |
| | | | 200 feet upstream from intersection of River and State Highway 368 | *31 |
| | | Buckhorn Creek | 150 feet upstream from intersection of Creek and U.S. Highway 319 and State Highway 375. | *21 |
| | | West Branch Buckhorn Creek | 200 feet upstream from intersection of Creek and U.S. Highway 319 and State Highway 375. | *23 |
| | | Ochlockonee River | Intersection of River and U.S. Highway 319 and State Highway 377 | *11 |
| | | Gulf of Mexico | Intersection of State Highway 372B and State Highways 30, 61 and U.S. Highway 98 near Panacea Park. | *10 |
| | | | Intersection of State Highway 365 and State Highway 30 and U.S. Highway 98 at Newport. | *12 |
| | Maps available at Wakulla County Courthouse, Church Street, Crawfordville, Florida. | | | |
| Illinois | (V), Broadview, Cook County (Docket No. FEMA-5817). | Addison Creek | Southern corporate limit | *620 |
| | | | Just downstream Indiana Harbor Belt Railroad | *623 |
| | | | Just upstream Illinois Central Gulf Railroad | *625 |
| | | | Just downstream of Eisenhower Expressway | *627 |
| | | Salt Creek | About 740 feet upstream confluence with Addison Creek | *620 |
| | | | South West corporate limits | *622 |
| | Maps available at the City Clerk's Office, Village Hall, 1600 Roosevelt Road, Broadview, Illinois 60153. | | | |
| Illinois | (C), Champaign, Champaign County (Docket No. FEMA-5815). | Boneyard Creek | Downstream corporate limits | *720 |
| | | | About 175 feet upstream of Springfield Avenue | 723 |
| | | | Just downstream of Conrail | *729 |
| | | | About 50 feet downstream of Illinois Central Gulf Railroad | *731 |
| | | | Just upstream of Illinois Central Gulf Railroad | *733 |
| | | Upper Boneyard Creek | About 100 feet downstream of Neil Street | *736 |
| | | | Just downstream of Bloomington Road | *747 |
| | | Third Street Boneyard Creek Tributary. | At confluence with Boneyard Creek | *722 |
| | | | About 700 feet upstream of confluence with Boneyard Creek | 723 |
| | | Copper Slough | About 950 feet downstream of Kirby Avenue | *712 |
| | | | About 150 feet downstream of William Street | *720 |
| | | | Just downstream of Springfield Avenue | *724 |
| | | | Just downstream of Parkland Way Road | *744 |
| | | | Just upstream of Conrail | *750 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | John Street Copper Slough Tributary. | At confluence with Copper Slough | *721 |
| | | | Upstream of confluence with Copper Slough | 725 |
| | | Phinney Branch | 2800 feet downstream of Duncan Road | *709 |
| | | | Just upstream of Hemlock Drive | *720 |
| | | | About 300 feet downstream Windsor Road | *726 |
| | Maps available at City Hall, Planning and Zoning Department, 102 North Neil Street, Champaign, Illinois 61820. | | | |
| Illinois | (V), Hinsdale Cook and Du Page Counties (Docket No. FEMA-5817). | 59th Street Ditch | Downstream corporate limit | *654 |
| | | | Approximately 800 feet downstream County Line Road | *660 |
| | | | Just upstream County Line Road | *671 |
| | | | Just upstream Charleston Road South | *678 |
| | | Bronswood Cemetery Tributary | Downstream corporate limit | *688 |
| | | | Just upstream Adams Road | *689 |
| | | | Approximately 100 feet downstream from State Route 83 | *697 |
| | | | Just downstream of State Route 83 | *699 |
| | | Salt Creek | Downstream corporate limit | *642 |
| | | | Just downstream York Road | *645 |
| | Maps available at Village Library, Hinsdale, Illinois 60521. | | | |
| Illinois | (V), Lake Bluff, Lake County (Docket No. FEMA-5815). | Skokie River | At the downstream corporate limit | *669 |
| | | | At the upstream corporate limit | *671 |
| | | Lake Michigan | Shoreline | *584 |
| | Maps available at Village Hall, 40 East Central Avenue, Lake Bluff, Illinois 60044. | | | |
| Illinois | (C), Palos Hills, Cook County (Docket NO. FEMA-5815). | Stony Creek (West) | Mouth at Calumet Sag Channel | *583 |
| | | | Just upstream 111th Street | *587 |
| | | | Just downstream Harlem Avenue | *591 |
| | | Lucas Ditch | Just downstream 111th Street | *585 |
| | | | Just downstream 86th Avenue | *591 |
| | | | About 250 feet downstream 80th Street | *595 |
| | | Lucas Ditch Cut-off | Approximately 1050 feet upstream of confluence | *589 |
| | | | Just downstream 103rd Street | *593 |
| | | | Just upstream 103rd Street | *594 |
| | | | Approximately 2200 feet upstream 103rd Street | *595 |
| | Maps available at Mayor's Office, City Hall, 8555 West 103rd Street, Palos Hills, Illinois 60465. | | | |
| Illinois | (V), Richton Park, Cook County (Docket No. FEMA-5788). | Butterfield Creek East Branch | Downstream corporate limit | *704 |
| | | | 950 feet downstream of Sauk Trial | *705 |
| | | | Just downstream of the north shopping center entrance | *708 |
| | | | Just upstream of the south shopping center entrance | *710 |
| | | | 630 feet upstream from the south shopping center entrance | *713 |
| | | | 1425 feet upstream from the south shopping center entrance | *717 |
| | | | Just downstream of tank farm driveway | *722 |
| | | Butterfield Creek East Branch Tributary. | Just upstream of the Elgin Joilet and Eastern Railroad | *705 |
| | | | Just downstream of Sauk Trail | *711 |
| | | | Just upstream of Sauk Trail | *719 |
| | | | Just downstream of Cicero Avenue | *719 |
| | | | Just upstream of Cicero Avenue | *722 |
| | | | Just downstream of Imperial Drive | *724 |
| | | | Just downstream of Lake Shore Drive crossing | *737 |
| | | | About 160 feet downstream of corporate limit | *737 |
| | | | Just downstream of Steger Road | *739 |
| | | Tributary A | At confluence with Butterfield Creek East Branch Tributary | *722 |
| | | | Just upstream of Amy Drive | *727 |
| | | | Upstream corporate limits | *731 |
| | Maps available at the Village Hall, 4045 Sauk Trail, Richton Park, Illinois 60471. | | | |
| Illinois | (C), Urbane, Champaign County (Docket NO. FEMA-5815). | Saline Branch | Approximately 1600 feet downstream of western corporate limits | *694 |
| | | | Just upstream of Broadway Avenue | *706 |
| | | | Approximately 1400 feet upstream of Lincoln Avenue | *717 |
| | | Boneyard Creek | Approximately 1450 feet downstream of University Avenue | *703 |
| | | | Just downstream of western corporate limits | *720 |
| | | McCullough Creek | Just upstream of Race Street | *718 |
| | | | Just downstream of Windsor Road | *727 |
| | Maps available at City Hall, Code Enforcement Office, 400 South Vine Street, Urbana, Illinois 61801. | | | |
| Illinois | (V), Westmont Du Page County (Docket No. FEMA-5815). | St. Joseph Creek | Approximately 1500 feet downstream of King Arthur Court Crossing | *720 |
| | | | Just downstream of Easy Acres Golf Course Culvert | *721 |
| | | | About 200 feet upstream from Easy Acres Golf Course Culvert | *726 |
| | | | Just downstream of 59th Street | *728 |
| | | | Just upstream of Williams Street near 59th Street intersection | *731 |
| | | | Just upstream of 61st Street | *734 |
| | | | Just upstream of 63rd Street | *737 |
| | | St. Joseph Creek Tributary | At confluence with St. Joseph Creek | *728 |
| | | | Approximately 130 feet from 61st Street | *734 |
| | Maps available at the Village Manager's Office, Village Hall, 31 West Quincy Street, Westmont, Illinois 60559. | | | |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Illinois | (C), Zion Lake County (Docket No. FEMA-5800). | Lake Michigan | All shoreline in Zion | *584 |
| | | Kellogg Ravine | A point approximately 1600 feet downstream of the abandoned railroad bridge (approximately 500 feet due north of the intersection of Gilead Avenue and 17th Street). | *650 |
| | | | At a point approximately 450 feet downstream of State Route 173 | *670 |
| | | | A point just downstream of Kenosha Road | *689 |
| | | | Approximately 750 feet upstream of Kenosha Road | *692 |
| | Maps available at the City Clerk's Office, City Hall, 2828 Sheridan Road, Zion, Illinois 60099. | | | |
| Indiana | (C), Muncie, Delaware County (Docket No. FI-5136). | White River | Just upstream 400 West Road | *915 |
| | | | Just upstream of Tillotson Avenue | *924 |
| | | | Just downstream of Walnut Street | *934 |
| | | | 550 feet downstream of Broadway Avenue | *940 |
| | | | Just upstream of Jackson Street | *950 |
| | | | Southeast corporate limit | *958 |
| | | York Prairie Creek | Just upstream of 400 West Road | *914 |
| | | | Just upstream of Norfolk and Western Railway | *922 |
| | | | Just downstream of Tillotson Avenue | *928 |
| | | Jakes Creek | Just upstream of 300 North Road | *928 |
| | | | Just upstream of Wheeling Avenue | *930 |
| | | | Just upstream of Rosewood Avenue | *932 |
| | | | Approximately 500 feet upstream of Chessie System | *939 |
| | | Muncie Creek | Just downstream of Highland Avenue | *940 |
| | | | Just downstream of Wad Avenue | *942 |
| | | | Just upstream of Broadway Avenue | *943 |
| | | | Just downstream of McGalliard Road | *944 |
| | | Buck Creek | East corporate limit | *939 |
| | | | Just upstream of Norfolk and Western Railway | *948 |
| | | | Just upstream of 23rd Street | *953 |
| | | | At upstream corporate limit (approximately 600 feet upstream of Madison Avenue). | *957 |
| | Maps available at the City Building, 220 East Jackson Street, Muncie, Indiana 47305. | | | |
| Iowa | (C), Hawarden Sioux County (Docket No. FEMA-5817). | Big Sioux River | At western corporate limit, about 800 feet downstream from Chicago and North Western Railroad. | *1,171 |
| | | | Just upstream of Chicago and North Western Railroad | *1,172 |
| | | | About 4,700 feet upstream of Chicago and North Western Railroad | *1,173 |
| | | | At northern corporate limit, about 9,370 feet upstream of Chicago and North Western Railroad. | *1,174 |
| | | Dry Creek | Western corporate limit | *1,171 |
| | | | About 100 feet upstream of E Avenue | *1,173 |
| | | | About 1,250 feet upstream of E Avenue | 1,179 |
| | | | Just upstream of the Chicago and North Western railroad bridge | *1,185 |
| | | | Just downstream of Tenth Street | *1,188 |
| | | | About 600 feet upstream of Tenth Street | *1,190 |
| | | Shallow flooding from Stream No. 5. | At intersection of 23rd Street and E Avenue | *1,178 |
| | Maps available at the City Hall, P.O. Box 231, Hawarden, Iowa 51023. | | | |
| Iowa | (C), Spencer, Clay County (Docket No. FEMA-5800). | Little Sioux River | At eastern corporate limits | *1,310 |
| | | | Just upstream of Grand Avenue | *1,315 |
| | | | At corporate limits approximately 7,200 feet upstream from Ocheyedan River. | *1,316 |
| | | | Approximately 1,000 feet upstream from west 4th Street | *1,318 |
| | | | Just upstream from West 18th Street | *1,320 |
| | | | Approximately 1,200 feet south of the intersection of Highway Boulevard and 30th Street. | *1,321 |
| | | | Approximately 0.5 mile northwest of the intersection of Highway Boulevard and 30th Street. | *1,322 |
| | | Ocheyedan River | At mouth at Little Sioux River | *1,315 |
| | | | At corporate limits (approximately 3,800 feet upstream from mouth) | *1,316 |
| | | Shallow flooding (from Little Sioux River through Chicago, Milwaukee, St. Paul and Pacific Railroad Culvert). | Between Highway Boulevard and east corporate limits in 30th Street area. | *1,321 |
| | | Shallow flooding (from Little Sioux River through culvert along Chicago, Milwaukee, St. Paul and Pacific Railroad). | Approximately 700 feet west of Country Club Drive, between Chicago, Milwaukee, St. Paul and Pacific Railroad and West 18th Street. | *1,319 |
| | Maps available at the City Hall, Spencer, Iowa 51301. | | | |
| Iowa | (C), Story City, Story County (Docket No. FEMA-5788). | Skunk River | About 1.0 mile downstream of Broad Street | *967 |
| | | | About 1.0 mile upstream of Broad Street | *975 |
| | | Unnamed Creek | About 500 feet downstream of Forest Avenue | *971 |
| | | | About 100 feet downstream of Eighth Street | *974 |
| | | | About 100 feet upstream of Grand Avenue | *982 |
| | Maps available at City Hall, Story City, Iowa 50248. | | | |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Kansas | (C), Auburn, Shawnee County (Docket No. FEMA-5817). | Wakarusa River | Approximately 1,400 feet downstream Auburn Road | *1,017 |
| | | North Branch Wakarusa River | Southern corporate limits (approximately 530 feet upstream Auburn Road). | *1,017 |
| | | | Western corporate limits | *1,017 |
| | Maps available at City Hall, P.O. Box 160, Auburn, Kansas 66402. | | | |
| Kansas | (C), Eudora, Douglas County (Docket No. FEMA-5815). | Eudora Middle Tributary | Just upstream of Atchison Topeka and Santa Fe Railway | *807 |
| | | | Just upstream of 7th Street | *815 |
| | | | Just upstream of 9th Street | *819 |
| | | | Just upsteam of 10th Street | *827 |
| | | | Just upstream of 12th Street | *833 |
| | | | Approximately 800 feet upstream of 12th Street | *837 |
| | | Eudora East Tributary | Just upstream of 10th Street | *837 |
| | | | Corporate limits | *837 |
| | | Wakarusa River | East corporate limits | *805 |
| | | | Approximately 650 feet upstream from Main Street | *806 |
| | | | West corporate limits | *807 |
| | Maps available at City Hall, Main and 7th Street, Eudora, Kansas 66025. | | | |
| Kansas | (C), Holton, Jackson County (Docket No. FEMA-5817). | Elk Creek | At the eastern extraterritorial limit | *985 |
| | | | About 265 feet downstream of the Chicago, Rock Island and Pacific Railroad. | *1,006 |
| | | | About 265 feet upstream of the Chicago, Rock Island and Pacific Railroad. | *1,010 |
| | | | About 200 feet upstream of Iowa Avenue | *1,015 |
| | | | Just upstream of U.S. Highway 75 | *1,021 |
| | | | At western extraterritorial limit | *1,052 |
| | | Banner Creek | At the confluence With Elk Creek | *1,003 |
| | | | Just downstream of the Chicago, Rock Island and Pacific Railroad | *1,020 |
| | | | Just downstream of U.S. Highway 75 | *1,033 |
| | | | At the western extraterritorial limit | *1,091 |
| | Maps available at City Hall, 5th and Pennsylvania, Holton, Kansas 66436. | | | |
| Maryland | Cambridge, City, Dorchester County (Docket No. FEMA-5817). | Chesapeake Bay | Shoreline of Choptank River in the City of Cambridge | *6 |
| | | | Shoreline of Cambridge Creek | |
| | | | Tributary A at southern Corporate Limits | *6 |
| | Maps available at the Department of Public Works, 703 Lenards Lane, Cambridge, Maryland. | | | |
| Maryland | Hurlock, Town, Dorchester County (Docket No. FEMA-5817). | Wright's Branch | Downstream Corporate Limits | *39 |
| | | | Upstream Corporate Limits | *39 |
| | Maps available at the Town Hall, 111 Poplar Street, Hurlock, Maryland. | | | |
| Michigan | (C), Fenton Genesee County (Docket No. FEMA-5817). | Shiawassee River | At north western limits | *873 |
| | | | Just upstream of North Road | *881 |
| | | | Just upstream of Grand Trunk Western Railroad | *884 |
| | | | At downstream side of Caroline Street | *888 |
| | | | Just downstream of Fenton Dam | *891 |
| | | | Just upstream of Fenton Dam | *899 |
| | | Fenton Mill Pond | Shoreline | *899 |
| | | Silver Lake | Shoreline | *872 |
| | Maps available at the City Manager's Office, City Hall, 301 Leroy Street, Fenton, Michigan 48430. | | | |
| Michigan | (Twp), Fenton, Genesee County (Docket No. FEMA-5817). | Shiawassee River | Downstream corporate limit | *851 |
| | | | Just upstream Hogan Road | *853 |
| | | | Downstream Village of Linden corporate limit | *854 |
| | | | Upstream Village of Linden corporate limit | *869 |
| | | | Approximately 2,200 feet upstream Linden corporate limit | *872 |
| | | | At City of Fenton corporate limit | *873 |
| | | Lake Ponemah | Shoreline | *872 |
| | | Squaw Lake | Shoreline | *872 |
| | | Tupper Lake | Shoreline | *872 |
| | | Silver Lake | Shoreline | *872 |
| | Maps available at the Township Office, 12060 Mantawauka, Fenton, Michigan 48430. | | | |
| Michigan | (Twp), Grand Haven, Ottawa County (Docket No. FEMA-5817). | Lake Michigan | Shoreline | *584 |
| | | Pattawattomie Bayou | Shoreline | *588 |
| | | Millhouse Bayou | Shoreline | *588 |
| | | Grand River | Downstream corporate limits | *585 |
| | | | Upstream corporate limits | *589 |
| | Maps available at the City Clerk's Office, 13300 168th Avenue, Grand Haven Township, Michigan 49417. | | | |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Michigan | (Twp), White River, Muskegon County (Docket No. FI-5702). | Lake Michigan | Shoreline | *584 |
| | | White Lake | Shoreline | *584 |
| | Maps available at Township Hall, White River, Michigan 49437. | | | |
| Minnesota | (C), Alvarado, Marshall County (Docket No. FEMA-5817). | Snake River | Just upstream of State Highway 1 | *810 |
| | | | At the upstream corporate limit | *812 |
| | Maps available at City Hall, P.O. Box 94, Alvarado, Minnesota 56710. | | | |
| Minnesota | (C), Corcoran, Hennepin County (Docket No. FEMA-5817). | North Fork Rush Creek | Downstream corporate limit (county road 117) | *914 |
| | | | Upstream side of Cain Road | *915 |
| | | | Just upstream of Trail Haven Road | *925 |
| | | | Just upstream of County Road 117 (located 0.66 mile downstream of Bechtold Road). | *930 |
| | | | Just upstream of Bechtold Road | *938 |
| | | | Just upstream of County Road 30 | *947 |
| | | | Just upstream of Sundance Road | *963 |
| | | | Just upstream of 97th Avenue North | *977 |
| | | | Just upstream of County Road 10 | *992 |
| | | | Just downstream of County Road 19 | *995 |
| | | | Just upstream of County Road 19 | *1,001 |
| | | | Approximately 1.05 miles upstream of Strehler Road | *1,004 |
| | | Rush Creek | Eastern corporate limits | *934 |
| | | | Just upstream of County Highway 116 | *937 |
| | | | Just upstream of County Highway 10 | *946 |
| | | | Just downstream of County Highway 50 | *959 |
| | | | Just upstream of Kalk Road | *965 |
| | | | Just upstream of Rolling Hills Road | *966 |
| | | | 0.66 mile upstream of Rolling Hills Road | *971 |
| | Maps available at the City Hall, 9525 Cain Road, Corcoran, Minnesota 55340. | | | |
| Missouri | (C), Caruthersville, Pemiscot County (Docket No. FEMA-5813). | Local Runoff in Vicinity of Ditch No. 1. | Interstate 155 and State Highway Y Interchange | *264 |
| | | | Approximately 950 feet south of the intersection of the center line of Interstate 155 and the center line of State Highway Y. | *264 |
| | | | Just west of Oxidation Pond | *265 |
| | | | Intersection of the center line of Interstate 155 and the center line of Greenwell Road. | *265 |
| | | | End of Ditch No. 1 at State Highway Y | *265 |
| | | | Approximately 1,000 feet north of the end of Ditch No. 1 along State Highway Y. | *265 |
| | | | Approximately 1,100 feet north of end of Ditch No. 1 along State Highway Y. | *266 |
| | | | Approximately 50 feet due south of the intersection of Magnolia and Poplar Streets. | *266 |
| | | | Approximately 2,000 feet east of intersection of State Highway and Poplar Street on eastern corporate limits. | *266 |
| | | | Approximately 2,000 feet east of the end Ditch No. 1 on the eastern corporate limits. | *266 |
| | | In Vicinity of Ditch No. 2 Lateral | Intersection of Ditch No. 2 lateral and southern corporate limits | *268 |
| | | | Intersection of Caffin Drive and 19th Street | *268 |
| | | Local Runoff in Vicinity of Southwestern Corporate Limits. | Southern end of Caruthersville Airport north-south run | *255 |
| | | | Approximately 1,500 feet north of the southern end of Caruthersville Airport north-south run. | *266 |
| | | | Approximately 2,200 feet due west of the intersection of Magnolia and Poplar Streets. | *266 |
| | | | Southern half of golf course | *267 |
| | | | Northern half of golf course | *268 |
| | | | Northern end of Caruthersville Airport north-south runway | *268 |
| | | In Vicinity of Ditch No. 6 Lateral A and Ditch No. 6 Lateral AA. | Just north of intersection of State Highway U and western corporate limits. | *269 |
| | | | Intersection of 15th Street and Ward Avenue | *269 |
| | | | Intersection of Ditch No. 6 Lateral A and western corporate limits | *269 |
| | | | At intersection of Grand Avenue and 6th Street | *269 |
| | | | Approximately 3,200 feet north of intersection of St. Louis-San Francisco Railway and western corporate limits on northern corporate limits. | *269 |
| | | Mississippi River | At downstream corporate limits | *281 |
| | | | At upstream corporate limits | *282 |
| | Maps available at City Hall, 200 W. 3rd, Caruthersville, Missouri 63830. | | | |
| Missouri | (C), Ellington, Reynolds County (Docket No. FEMA-5702). | Logan Creek | Approximately ½ mile downstream of State Highway 21 | *651 |
| | | | Just upstream of State Highway 21 | *657 |
| | | | Just downstream from Main Street | *661 |
| | | | Approximately ¼ mile upstream of confluence of Unnamed Tributary | *676 |
| | | Dickson Creek | At downstream corporate limits | *651 |
| | | | Just downstream of Second Street | *686 |
| | | | About 450 feet upstream of Main Street | *671 |
| | | | Just upstream of Cherry Street | *708 |
| | | | About 0.66 mile upstream of Cherry Street | *727 |
| | Maps available at the City Hall, P.O. Box 7, Ellington, Missouri 63638. | | | |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Missouri | (C), Farmington, St. Francois County (Docket No. FEMA-5815). | Kennedy Branch | Downstream corporate limits (just upstream of State Highway 32) | *852 |
| | | | Just upstream Curtis Street | *864 |
| | | | About 50 feet upstream North Carleton Street | *879 |
| | | | About 1,400 feet upstream North Middle Street | *894 |
| | | St. Francis River Tributary | Downstream corporate limits (just downstream of West Columbia Street). | *878 |
| | | | Upstream corporate limits (just downstream of West Liberty Street) | *892 |
| | Maps available at the City Clerk's Office, City Hall, 110 West Columbia, Farmington, Missouri 63640. | | | |
| Missouri | (T), Grantwood Village, St. Louis County (Docket No. FEMA-5813). | Gravois Creek | Downstream corporate limits | *489 |
| | | | Just downstream of Dam, approximately 100 feet upstream of service road. | *500 |
| | | | Approximately 1,040 feet downstream from Pardee Road | *502 |
| | | | About 1,200 feet upstream Pardee Road | *510 |
| | Maps available at City Hall Meeting Room, Basement of Slay's Restaurant, Grantwood, Missouri 63123. | | | |
| Missouri | (C), Kinloch, St. Louis County (Docket No. FEMA-5815). | Maline Creek | About 300 feet downstream of eastern corporate limits | *506 |
| | | | Just downstream of North Hanley Road | *516 |
| | Maps available at City Hall, 5990 Monroe Avenue, Kinloch, Missouri 63140. | | | |
| Missouri | (C), Oakland, St. Louis County (Docket No. FEMA-5813). | Gravois Creek | Downstream corporate limit | *564 |
| | | | Just upstream of St. Louis, San Francisco Railroad | *569 |
| | | | Just downstream of Oakland Avenue | *570 |
| | | | Just upstream of Oakland Avenue | *574 |
| | | | Just downstream of Missouri Pacific Railroad | *579 |
| | | | Just upstream of Missouri Pacific Railroad | *587 |
| | | | Just upstream of Sappington Road | *592 |
| | Maps available at City Clerk's Office, 1007 Oakland Avenue, Oakland, Missouri 63122. | | | |
| Missouri | (C), Shrewsbury, St. Louis County (Docket No. FEMA-5778). | Tributary to No Name Creek | Just downstream of St. Louis & San Francisco Railway | *466 |
| | | | Approximately 400 feet upstream of Watson Road | *473 |
| | | | About 300 feet downstream of Laclede Station Road | *483 |
| | | | Just downstream of Laclede Station Road | *484 |
| | | Deer Creek | Approximately 150 feet downstream of St. Louis Belt & Terminal Railroad. | *434 |
| | | | Just upstream of St. Louis Belt & Terminal Railroad | *438 |
| | | | Just downstream of Big Bend Boulevard | *443 |
| | | North Tributary to River Des Peres. | Just upstream of St. Louis & San Francisco Railroad | *432 |
| | | Murdock Tributary to River Des Peres. | Just upstream of St. Louis & San Francisco Railroad | *430 |
| | Maps available at City Hall, 4400 Shrewsbury Avenue, Shrewsbury, Missouri 63119. | | | |
| Nebraska | (V), Arlington, Washington County (Docket No. FEMA-5815). | Elkhorn River | Approximately 8,000 feet downstream of Chicago & North Western Railroad. | *1,157 |
| | | | Approximately 50 feet upstream of Chicago & North Western Railroad | *1,161 |
| | | | Approximately 1,800 feet downstream of U.S. Highway 30 | *1,165 |
| | | | Approximately 7,400 feet upstream of U.S. Highway 30 | *1,167 |
| | | Bell Creek | Approximately 60 feet upstream of Chicago & North Western Railroad | *1,163 |
| | | | Just upstream of U.S. Highway 30 | *1,168 |
| | | | Approximately 950 feet upstream of U.S. Highway 30 | *1,168 |
| | | | Approximately 1,280 feet upstream of the County Road P 111 crossing which is located about 850 feet upstream of County Road P 32. | *1,171 |
| | Maps available at City Hall, Arlington, Nebraska 68002. | | | |
| Nebraska | (Uninc.), Douglas County (Docket No. FEMA-5788). | Platte River | Southern county boundary | *1,102 |
| | | | 3,000 feet downstream of State Highway 92 | *1,120 |
| | | | 500 feet downstream of Union Pacific Railroad | *1,144 |
| | | | 400 feet upstream of Union Pacific Railroad | *1,148 |
| | | | One mile upstream of Union Pacific Railroad | *1,149 |
| | | | 400 feet upstream of State Highway 64 | *1,157 |
| | | | 3,400 feet downstream of northern county boundary | *1,161 |
| | | | 600 feet downstream of northern county boundary | *1,169 |
| | | Elkhorn River | Southern county boundary | *1,104 |
| | | | Just downstream of Q Street | *1,108 |
| | | | Just upstream of U.S. Highway 275 | *1,116 |
| | | | Just downstream of State Highway 64 | *1,125 |
| | | | Just upstream of State Highway 64 | *1,129 |
| | | | Just upstream of State Highway 36 | *1,146 |
| | | | 1,600 feet upstream of northern county boundary | *1,149 |
| | | West Papillion Creek | About 5,100 feet downstream of Union Pacific Railroad | *1,117 |
| | | | Just upstream of Union Pacific Railroad | *1,126 |
| | | | 4,100 feet upstream of Union Pacific Railroad | *1,135 |
| | Maps available at County Permits & Inspection Office, 3015 Menke Circle, Omaha, Nebraska 68183. | | | |
| Nebraska | (C), Papillion, Sarpy County (Docket No. FEMA-5815). | Big Papillion Creek | Approximately 1,300 feet downstream of Fricke Ditch | *998 |
| | | | Approximately 4,700 feet upstream of Fricke Ditch | *999 |
| | | West Papillion Creek | Approximately 1 mile downstream of 66th Street | *1,001 |
| | | | Just upstream of 66th Street | *1,006 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Just downstream from Washington Street | *1,013 |
| | | | Located at upstream corporate limit | *1,016 |
| | | | Approximately 600 feet upstream from confluence of Walnut Creek | *1,020 |
| | | | Approximately 500 feet upstream from Papillion extraterritoral limits | *1,030 |
| | | Midland Creek | Approximately 900 feet downstream from County Road | *1,007 |
| | | | Just upstream of County Road | *1,012 |
| | | | Approximately 1,300 feet upstream from County Road | *1,016 |
| | | | Just upstream from Chicago, Rock Island and Pacific Railroad | *1,027 |
| | | | Just upstream from State Highway 370 | *1,030 |
| | | | Approximately 1,100 feet upstream from State Highway 370 | *1,031 |
| | | | At confluence of West Midland Creek | *1,041 |
| | | | Approximately 1,725 feet upstream from confluence of West Midland Creek | *1,051 |
| | | Walnut Creek | At confluence of West Papillion Creek | *1,020 |
| | | | Approximately 2,100 feet downstream from County Road | *1,021 |
| | | | Just upstream from County Road | *1,031 |
| | | | Approximately 200 feet upstream from State Highway 370 | *1,049 |
| | | | Approximately 1,000 feet downstream from Private Road | *1,058 |
| | | | Just upstream from Private Road | *1,062 |
| | | | Approximately 700 feet downstream of confluence of West Walnut Creek | *1,071 |
| | | | Approximately 550 feet upstream of confluence of West Walnut Creek | *1,075 |
| | | West Walnut Creek | At confluence with Walnut Creek | *1,073 |
| | | | Approximately 375 feet upstream from Private Drive | *1,075 |
| | | South Midland Creek | At confluence with Midland Creek | *1,035 |
| | | | Approximately 1,600 feet upstream from confluence with Midland Creek | *1,042 |
| | | West Midland Creek | At confluence with Midland Creek | *1,041 |
| | | | Approximately 100 feet upstream Chicago, Rock Island and Pacific Railroad | *1,057 |
| | | | Approximately 1,000 feet upstream from Chicago, Rock Island and Pacific Railroad | *1,060 |
| | Maps available at City Hall, 122 East 3rd Street, Papillion, Nebraska 68046 | | | |
| Nebraska | (Uninc.), Sarpy County (Docket No. FEMA-5815). | Missouri River | Downstream county boundary | *966 |
| | | | About 1.6 miles upstream of confluence of Papillion Creek | *968 |
| | | | About 2.16 miles downstream of confluence of Mosquito Creek | *973 |
| | | | At confluence of Indian Creek | *976 |
| | | Platte River | Mouth at Missouri River | *966 |
| | | | Just upstream of U.S. Highways 73 & 75 | *970 |
| | | | About 1.84 miles upstream of U.S. Highways 73 & 75 | *979 |
| | | | About 2.25 miles downstream of confluence of Buffalo Creek | *1,005 |
| | | | About 300 feet upstream of State Highway 50 | *1,025 |
| | | | Just upstream of Chicago, Rock Island and Pacific Railroad | *1,038 |
| | | | Just downstream Interstate 80 | *1,053 |
| | | | Just upstream of Interstate 80 | *1,056 |
| | | | About 600 feet upstream of U.S. Highway 6 | *1,067 |
| | | | About 0.62 mile downstream of confluence of Elkhorn River | *1,080 |
| | | | Northern county boundary | *1,133 |
| | | Papillion Creek | At mouth | *967 |
| | | | About 1.71 miles upstream of LaPlatte Road | *973 |
| | | Big Papillion Creek | About 4,600 feet downstream of Cornhusker Drive | *998 |
| | | | About 1 mile upstream of Cornhusker Drive | *998 |
| | | West Papillion Creek | About 1,100 feet downstream of Chicago, Rock Island and Pacific Railroad | *995 |
| | | | About 2,500 feet upstream of 45th Street | *1,001 |
| | | Buffalo Creek | At mouth | *1,013 |
| | | | Just upstream of Chicago, Rock Island and Pacific Railroad | *1,013 |
| | | | About 1,450 feet upstream of State Highway 50 | *1,030 |
| | | | Just upstream of 156th Street | *1,042 |
| | | | Just upstream of Ruh Road | *1,054 |
| | | | Just upstream of 168th Street | *1,063 |
| | | | Just upstream of Fitzg Road | *1,076 |
| | | | Just upstream of 180th Street | *1,090 |
| | | | Just upstream of Flatview Road | *1,100 |
| | | | About 0.62 mile upstream of Flatview Road | *1,105 |
| | | Springfield Creek | At mouth | *1,012 |
| | | | About 300 feet upstream of Buffalo Road | *1,012 |
| | | | Just upstream of Missouri Pacific Railroad | *1,026 |
| | | | About 2,900 feet upstream of Missouri Pacific Railroad (first crossing) | *1,030 |
| | | | About 1,900 feet downstream of Fairview Road | *1,073 |
| | | | Just upstream of Fairview Road | *1,081 |
| | | | About 2,200 feet upstream of Fairview Road | *1,086 |
| | | Elkhorn River | At mouth | *1,085 |
| | | | About 3.59 miles upstream of mouth | *1,097 |
| | | | About 600 feet upstream of upstream county boundary | *1,102 |
| | Maps available at Sarpy County Courthouse, Papillion, Nebraska 68046 | | | |
| Nevada | North Las Vegas (City), Clark County FEMA-5728. | Las Vegas Wash | Carey Avenue 50 feet downstream from centerline | *1,836 |
| | | | Carey Avenue 50 feet upstream from centerline | *1,841 |
| | | | Cheyenne Avenue 50 feet downstream from centerline | *1,858 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Cheyenne Avenue 75 feet upstream from centerline | *1,865 |
| | | | Losee Road 100 feet upstream from centerline | *1,915 |
| | | | Intersection of Juelene Way and Lockwood Avenue | #1 |
| | | | Intersection of Crawford Street and Judson Avenue | #1 |
| | | | Intersection of Statz Street and Carey Avenue | #2 |
| | | Unnamed Tributary to Las Vegas Wash. | Cheyenne Avenue at centerline | *1,869 |
| | | | Losee Road 50 feet upstream from centerline | *1,908 |
| | | | Craig Road 50 feet upstream from centerline | *1,959 |
| | | | Tillman Drive at centerline | *1,997 |
| Maps available at City Hall, 2200 Civic Center Drive, North Las Vegas, Nevada. | | | | |
| New Jersey | Phillipsburg, Town, Warren County, (Docket No. FEMA-5815). | Delaware River | Downstream Corporate Limits | *180 |
| | | | Approximately 6,100 feet upstream of Downstream Corporate Limits | *188 |
| | | | Upstream side of Upstream Conrail bridge | *192 |
| | | | Upstream side of North Hampton Street bridge | *195 |
| | | | Upstream Corporate Limits | *198 |
| | | Lopatcong Creek | Confluence with Delaware River | *184 |
| | | | Approximately 160 feet upstream of private drive bridge | *184 |
| | | | Approximately 470 feet upstream of private drive bridge | *189 |
| | | | Approximately 760 feet upstream of private drive bridge | *193 |
| | | | Approximately 90 feet downstream of South Main Street bridge | *199 |
| | | | South Main Street bridge | *202 |
| | | | Upstream side of spillway, located approximately 320 feet upstream of the South Main Street bridge. | *205 |
| | | | Upstream side of Lock Street bridge (first crossing) | *210 |
| | | | Upstream of Chestnut Street bridge | *215 |
| | | | Approximately 280 feet downstream of downstream private road bridge. | *218 |
| | | | Upstream side of downstream private road bridge | *221 |
| | | | Approximately 360 feet downstream of Lock Street bridge | *224 |
| | | | Upstream side of Lock Street bridge (second crossing) | *228 |
| | | | Upstream private road bridge | *233 |
| | | | Upstream Corporate Limits | *234 |
| Maps available at the Building and Zoning Department, Phillipsburg, New Jersey. | | | | |
| New Jersey | Wanaque, Borough, Passaic County (Docket No. FEMA-5798). | Wanaque River | Downstream Corporate Limits | *212 |
| | | | Confluence with Meadow Brook | *217 |
| | | | Upstream side of USGS gage #1387000 at Spillway | *221 |
| | | | Approximately 330 feet upstream of Ringwood Avenue | *227 |
| | | | Approximately 760 feet upstream of Ringwood Avenue | *254 |
| | | | Upstream of Raymond Dam Spillway | *305 |
| | | | Upstream Corporate Limits | *305 |
| | | Post Brook | Downstream Corporate Limits | *212 |
| | | | Upstream side of Union Avenue | *214 |
| | | | Upstream side of First Avenue | *216 |
| | | | Upstream side of Lake Washington Spillway | *224 |
| | | | Upstream side of Doty Road | *224 |
| | | | Upstream Corporate Limits | *243 |
| | | Post Brook Branch 1 | Confluence with Post Brook | *214 |
| | | | Downstream side of Upper Twin Lake Spillway | *215 |
| | | | Upstream side of Upper Twin Lake Spillway | *220 |
| | | | Upstream Corporate Limits | *221 |
| | | Post Brook Branch 2 | Confluence with Post Brook | *222 |
| | | | Makemoney Avenue | *230 |
| | | | Upstream side of Thomas Lake Spillway. | *233 |
| | | | Downstream side of Unimproved Road approximately 490 feet upstream of Thomas Lake Drop Spillway. | *239 |
| | | | Approximately 370 feet upstream of Unimproved Road | *243 |
| | | Meadow Brook | Confluence with Wanaque River | *217 |
| | | | Downstream side of East Avenue | *236 |
| | | | Upstream side of Prospect Street | *244 |
| | | | Downstream side of Conklintown Road | *257 |
| | | | Upstream Corporate Limits | *261 |
| | | Stephens Lake Brook | Confluence with Meadow Brook | *248 |
| | | | Upstream side of Crescent Road | *255 |
| | | | Corporate Limits at downstream crossing of Conklintown Road | *270 |
| | | | Corporate Limits at upstream crossing of Conklintown Road | *316 |
| | | | Approximately 500 feet upstream of upstream crossing of Conklintown Road. | *343 |
| | | | Upstream side of Humbert Place | *358 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Downstream side of Stephens Lake Road | *380 |
| | | | Approximately 300 feet upstream of Stephens Lake Road | *395 |
| | | | Downstream side of Stephens Lake Spillway | *421 |
| | | | Upstream side of Stephens Lake Spillway | *425 |
| | | | Upstream side of Unimproved Road approximately 1,355 feet upstream of Stephens Lake Spillway. | *441 |
| | | | Approximately 2,020 feet upstream of Unimproved Road | *448 |
| | | Stephens Lake Brook Branch 2 | Downstream Corporate Limits | *363 |
| | | | Approximately 300 feet upstream of Corporate Limits | *381 |
| | | | Approximately 600 feet upstream of Corporate Limits | *400 |
| | | | Approximately 900 feet upstream of Corporate Limits | *420 |
| | | | Approximately 1,200 feet upstream of Corporate Limits | *439 |
| | | | Upstream Corporate Limits | *456 |
| | Maps available at the Municipal Building, Wanaque, New Jersey. | | | |
| New Jersey | West Long Branch, Borough, Monmouth County (Docket No. FEMA-5815). | Turtle Mill Brook | Downstream Corporate Limits | *9 |
| | | | Upstream side of Victor Avenue | *10 |
| | | | Downstream side of Cemetery Access Road | *11 |
| | | | Downstream side of Monmouth Road | *13 |
| | | Whale Pond Brook | Downstream Corporate Limits | *21 |
| | | | Upstream side of Larchwood Avenue | *24 |
| | | | Upstream side of Monmouth Road | *26 |
| | | | Ridge Drive (Extended) | *32 |
| | | | Downstream side of Whale Pond Road | *35 |
| | | South Shrewsbury River | Tidal flooding on Turtle Mill Brook (Downstream Corporate Limits | *9 |
| | Maps available at the Borough Clerk's Office, West Long Branch, New Jersey. | | | |
| New Jersey | West Milford, Township, Passaic County (Docket No. FEMA-5880). | Longhouse Creek | State Boundary | *1,088 |
| | | | Downstream of Lake Shore Drive | *1,091 |
| | | | Upstream of Upper Greenwood Lake Spillway | *1,101 |
| | | | Upstream of Mt. Laurel Lake Drop Spillway | *1,102 |
| | | | Upstream of Driveway 860 feet upstream of Clinton Road | *1,105 |
| | | | Downstream of Cherry Ridge Road | *1,114 |
| | | | Upstream of Lake Lookover Spillway | *1,128 |
| | | | Upstream of Bearfort Waters Spillway approximately 678 feet upstream of Unimproved Road. | *1,135 |
| | | Belcher Creek | Confluence with Greenwood Lake | *822 |
| | | | Upstream of Greenwood Lake Turnpike | *824 |
| | | | Downstream of Union Valley Road 1st crossing | *826 |
| | | | Upstream of Pinecliff Lake Spillway | *835 |
| | | | Downstream of Stowaway Road | *835 |
| | | | Upstream of Spillway approximately 90 feet upstream of Stowaway Road. | *844 |
| | | | 60 feet downstream of Driveway approximately 440 feet downstream of Union Valley Road. | *855 |
| | | | Downstream of Union Valley Road 2nd crossing | *863 |
| | | | 40 feet downstream of New Dockarty Hollow Road | *873 |
| | | | Upstream of Driveway approximately 390 feet upstream of New Dockarty Hollow Road. | *886 |
| | | | Upstream of Spillway approximately 1,150 feet upstream of New Dockarty Hollow Road. | *701 |
| | | | 30 feet upstream of Unimproved Road | *711 |
| | | | Upstream of Morris Avenue | *721 |
| | | | Upstream of Bergen Drive | *740 |
| | | | Upstream of Spillway approximately 640 feet upstream of Bergen Drive. | *752 |
| | | | Upstream of Spillway approximately 1,380 feet upstream of Bergen Drive. | *781 |
| | | | Approximately 40 feet upstream of Union Valley Road 3rd crossing | *787 |
| | | Cooley Brook | Confluence with Belcher Creek | *624 |
| | | | 60 feet upstream of Warwick Turnpike | *633 |
| | | | Approximately 1,945 feet upstream of Warwick Turnpike | *645 |
| | | Belcher Creek Branch 2 | Confluence with Belcher Creek | *645 |
| | | | Downstream of Union Valley Road | *646 |
| | | | Upstream of Reflection Lake Spillway | *650 |
| | | | Downstream of Driveway | *657 |
| | | | 850 feet upstream of Driveway | *721 |
| | | | Downstream of Unimproved Road | *757 |
| | | | Approximately 1,170 feet upstream of Unimproved Road | *791 |
| | | Post Brook | Downstream Corporate Limits | *862 |
| | | | Downstream of Spillway approximately 1,100 feet upstream of Corporate Limits. | *864 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Upstream of Spillway | *870 |
| | | | Downstream of Weaver Road | *878 |
| | | | Upstream of Mathew's Lake Spillway | *883 |
| | | | Downstream of Grodon Lake Spillway | *883 |
| | | | Upstream of Grodon Lake Spillway | *893 |
| | | | Upstream of Crescent Road | *895 |
| | | | Downstream of Algonquin Waters Spillway | *945 |
| | | | Approximately 3,140 feet upstream of Algonquin Waters Spillway | *981 |
| | | Post Brook Branch 3 | Confluence with Post Brook | *874 |
| | | | Downstream of Zeliff Pond Spillway | *881 |
| | | | Upstream of Zeliff Pond Spillway | *886 |
| | | | Upstream of Driveway approximately 890 feet upstream of Zeliff Pond Spillway. | *897 |
| | | | Upstream of Spillway approximately 135 feet upstream of Weaver Road. | *910 |
| | | | Approximately 810 feet upstream of Breached Dam | *915 |
| | | | Approximately 1,810 feet upstream of Breached Dam | *973 |
| | | Post Brook Branch 4 | Confluence with Post Brook Branch 3 | *875 |
| | | | Upstream of Weaver Road | *882 |
| | | | Approximately 465 feet upstream of Weaver Road | *898 |
| | | West Brook | Upstream of Lower Mt. Glen Lake Spillway | *902 |
| | | | Downstream of Rosemont Avenue | *902 |
| | | | Upstream of Rosemond Avenue | *916 |
| | | | Upstream of Upper Mt. Glen Lake Spillway | *931 |
| | | | Upstream of Otterhole Road Spillway | *935 |
| | | | Downstream of Schofield Road | *959 |
| | | | Downstream of Indian Trail Lake Spillway | *977 |
| | | | Approximately 590 feet upstream of Indian Trail Lake Spillway | *981 |
| | | West Brook Branch 7 | Confluence with West Brook | *932 |
| | | | Upstream of Broadway | *941 |
| | | | Upstream of Driveway approximately 228 feet upstream of Broadway | *956 |
| | | | Downstream of Lindy's Drive | *988 |
| | | | Upstream of Lindy Lake Spillway | *994 |
| | | | Approximately 1,800 feet upstream of Lindy Lake Spillway | *994 |
| | | Green Brook | Confluence with Cooley Brook | *626 |
| | | | Upstream of Union Valley Road | *636 |
| | | | Waterfall | *659 |
| | | | Approximately 375 feet upstream of Waterfall | *680 |
| | | Belcher Creek Branch 1 | Confluence with Belcher Creek | *624 |
| | | | Upstream of Glencross Road | *626 |
| | | | Upstream of Windsor Road | *643 |
| | | | Upstream of Spillway approximately 192 feet upstream of Windsor Road. | *648 |
| | | | Downstream side of Union Valley Road | *648 |
| | | | Approximately 48 feet upstream of Union Valley Road | *654 |
| | | Morsetown Brook | Confluence with Belcher Creek | *624 |
| | | | Downstream of Spillway approximately 1,900 feet upstream of confluence. | *632 |
| | | | Upstream of Lincoln Avenue | *643 |
| | | | Downstream of Marshall Hill Road | *655 |
| | | | Approximately 3,055 feet upstream of Marshall Hill Road | *734 |
| | | | Approximately 5,855 feet upstream of Marshall Hill Road | *804 |
| | | | Upstream of Mountain Circle North | *871 |
| | | | Downstream of Mountain Circle South | *891 |
| | | | Downstream of Spillway approximately 492 feet upstream of Mountain Circle South. | *907 |
| | | | Upstream of Spillway | *912 |
| | | | Downstream of Carpi Lake Spillway | *916 |
| | | | Upstream of Carpi Lake Spillway | *923 |
| | | Pequannock River | Downstream Corporate Limits | *429 |
| | | | Upstream of Conrail | *442 |
| | | | N.J. Route 23 (Downstream crossing) | *455 |
| | | | N.J. Route 23 (Eastbound) | *520 |
| | | | N.J. Route 23 (U-Turn) | *562 |
| | | | Approximately 560 feet upstream of N.J. Route 23 (U-Turn) | *569 |
| | Maps available at the Township Planning Department, West Milford, New Jersey. | | | |
| North Dakota | Crystal (City), Pembina County, FEMA-5813. | Cart Creek | Intersection of Lafayette Avenue and 3rd Street | *906 |
| | | | Intersection of State Highway 66 and 4th Street | *911 |
| | Maps available at City Hall, Crystal, North Dakota. | | | |
| North Dakota | Grafton (City), Walsh County FEMA-5815. | Park River | 100 feet upstream from center of Burgamont Avenue Bridge | *826 |
| | | | 100 feet upstream from center of Kittson Avenue | *830 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | Shallow Flooding | 100 feet northwest of intersection of State Highway 17 and western corporate limits. | *830 |
| | Maps available at City Hall, Grafton, North Dakota. | | | |
| North Dakota | Minto (City), Walsh County, FEMA-5815. | Forest River | Intersection of creek and center of First Street Bridge | *817 |
| | | | Intersection of Gillespie Avenue and 4th Street | *819 |
| | Maps available at City Hall, Minto, North Dakota. | | | |
| Ohio | (C) Barberton, Summit County (Docket No. FEMA-5815). | Tuscarawas River | At southern corporate limit | *961 |
| | | | Just upstream of Tuscarawas Avenue | *964 |
| | | | At eastern corporate limit | *966 |
| | | Wolf Creek | At confluence of Tuscarawas River | *962 |
| | | | Just upstream of Wooster Road | *966 |
| | | | At northern corporate limit | *967 |
| | | Hudson Run | About 1,600 feet downstream of Wooster Road | *974 |
| | | | About 800 feet upstream of Wooster Road | *977 |
| | | | About 420 feet downstream of 31st Street | *980 |
| | | | About 300 feet upstream of 31st Street Northwest | *983 |
| | | Pancake Creek | At Eastern Road (southern corporate limit) | *1,047 |
| | | | 800 feet upstream Eastern Road | *1,050 |
| | | | Just downstream of western corporate limit | *1,061 |
| | | Mud Run | At confluence of Tuscarawas River | *966 |
| | | | Just upstream of U.S. Route 224 | *969 |
| | | | At northern corporate limit | *970 |
| | Maps available at Municipal Building, 576 W. Park Avenue, Barberton, Ohio 44203. | | | |
| Ohio | (C) Brecksville, Cuyahoga County (Docket No. FEMA-5813). | Chippewa Creek | Just upstream of Chippewa Road | *809 |
| | | | Just upstream of Brecksville Road | *815 |
| | | | About 200 feet downstream of western corporate limit | *870 |
| | Maps available at City Hall, 9069 Brecksville Road, Brecksville, Ohio 44141. | | | |
| Ohio | (V), Chilo Clermont County (Docket No. FEMA-5813). | Ohio River | Downstream corporate limit | *509 |
| | | | Upstream corporate limit | *510 |
| | Maps available at the Village Hall, Chilo, Ohio 45112. | | | |
| Ohio | (Uninc.), Erie County (Docket No. FEMA-5813). | Taylor Creek | Confluence with Sulphur Brook | *583 |
| | | | About 120 feet upstream of Dewitt Avenue | *598 |
| | | | About 150 feet upstream of Columbus Avenue | *617 |
| | | | About 120 feet upstream of State Route 2 | *623 |
| | | | About 350 feet upstream of Bogart Road | *625 |
| | | Pipe Creek | About 250 feet downstream of confluence with Taylor Creek | *583 |
| | | | Just downstream of Chessie System railroad | *597 |
| | | | About 800 feet downstream of Strub Road | *606 |
| | | | Just downstream of Chessie System railroad near Bogart Road | *626 |
| | | | Just upstream of Chessie System railroad near Bogart Road | *632 |
| | | | About 100 feet downstream of Lewis Research Center property boundary. | *632 |
| | | Storrs-Hemminger Ditch | About 1,050 feet upstream of confluence with Kob Ditch | *583 |
| | | | Just downstream of Milan Road | *603 |
| | | | Just upstream of Milan Road | *606 |
| | | | About 1,300 feet upstream of Milan Road | *611 |
| | | | About 100 feet downstream from Columbus Avenue | *623 |
| | | | About 950 feet upstream from Columbus Avenue | *624 |
| | | Kob Ditch | About 80 feet upstream from Perkins Avenue | *581 |
| | | | About 1,100 feet upstream from confluence with Storrs-Hemminger Ditch. | *583 |
| | | | Just downstream from Hull Drive | *594 |
| | | Windeu Ditch | Confluence with Mills Creek | *607 |
| | | | Just downstream of State Highway 2 | *614 |
| | | Sulphur Brook | About 60 feet upstream from confluence with Taylor Creek | *585 |
| | | | Just downstream from Columbus Avenue | *589 |
| | | | Just upstream from Columbus Avenue | *595 |
| | | | Just upstream from Marshall Avenue | *599 |
| | | | Just downstream from Schiller Avenue | *601 |
| | | | Just upstream from Schiller Avenue | *607 |
| | | | Just upstream from Strub Road | *614 |
| | | | About 960 feet downstream from Bogart Road | *623 |
| | | Plum Brook | Just downstream from Cleveland Sandusky Road | *577 |
| | | | About 1,240 feet upstream of Perkins Avenue | *581 |
| | | Boos Ditch | Mouth at Sandusky Bay | *577 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Just downstream of Cleveland Sandusky Road | *583 |
| | | Sawmill Creek | About 2,800 feet downstream of Cleveland Sandusky Road | *577 |
| | | | About 30 feet upstream of Conrail | *589 |
| | | | Confluence with Dautch Ditch | *603 |
| | | Huron River | About 1.35 miles upstream of State Route 2 | *579 |
| | | | Just downstream of Mason Road | *588 |
| | | Edson Creek | Just upstream of Haber Road | *605 |
| | | | About 4,000 feet downstream of State Route 2 | *613 |
| | | | Just downstream of State Route 2 | *636 |
| | | Mills Creek | About 270 feet upstream of Norfolk and Western Railroad | *598 |
| | | | About 60 feet downstream of confluence with Windau Ditch | *607 |
| | | | About 2,200 feet upstream of State Route 2 | *626 |
| | | Lake Erie | Along the shoreline | *577 |
| | | Shallow Flooding (from Sulphur Brook). | Intersection of Columbus and Marshall Avenues | #1 |
| Maps available at the Erie County Courthouse, Sandusky, Ohio 44870. | | | | |
| Ohio | (C), Fairlawn, Summit County (Docket No. FEMA-5815). | Shocalog Run | Downstream corporate limits | *980 |
| | | | Just downstream of Trunko Road | *986 |
| | | | Just upstream of Trunko Drive | *991 |
| | | | Upstream corporate limits | *995 |
| Maps available at Village Hall, 3487 S. Smith Road, Fairlawn, Ohio 44313. | | | | |
| Ohio | (V), Milford, Hamilton County (Docket No. FEMA-5813). | Little Miami River | At the southern corporate limit | *511 |
| | | | Approximately 250 feet upstream of the U.S. Route 50 bridge | *523 |
| | | | At the northern corporate limit, approximately 4665 feet upstream of the U.S. Route 50 bridge. | *532 |
| Maps available at Village Hall, 29 High Street, Milford, Ohio 45150. | | | | |
| Ohio | (C), Norton, Summit County (Docket No. FEMA-5815). | Pigeon Creek | Confluence with Wolf Creek | *970 |
| | | Tributary No. 1 to Pigeon Creek | At corporate limits | *970 |
| | | | Confluence with Pigeon Creek | *970 |
| | | | At corporate limts | *971 |
| | | Wolf Creek | At corporate limits | *967 |
| | | | At Barber Road | *968 |
| | | | Just upstream of Interstate 76 | *969 |
| | | | Approximately 1000 feet upstream of Akron-Wadsorth Road | *970 |
| | | | Just downstream of Summit Road second crossing | *971 |
| | | | Approximately 500 feet upstream of Summit Road second crossing | *973 |
| | | Pancake Creek | At corporate limits | *1,061 |
| | | | Just downstream of Taylor Road | *1,065 |
| | | | Just upstream of Taylor Road | *1,070 |
| | | | At corporate limits | *1,073 |
| | | Tuscarawas River | South corporate limits | *960 |
| | | | North corporate limits | *961 |
| | | Hudson Run | Corporate limits | *983 |
| | | | Approximately 1000 feet downstream of Lake Dorothy | *986 |
| | | | Approximately 600 feet downstream of Lake Dorothy | *987 |
| | | | At Lake Dorothy | *989 |
| Maps available at Municipal Building, 4060 Columbia Woods Road, Norton, Ohio 44203. | | | | |
| Ohio | (V), Obetz, Franklin County (Docket No. FEMA-5815). | Big Walnut Creek | Approximately 0.36 mile downstream from Alum Creek Drive | *722 |
| | | | Just downstream from Groveport Road | *725 |
| | | | Approximately 2.0 miles upstream of Groveport Road | *728 |
| Maps available from the Village Hall, 50 Obetz Avenue, Obetz, Ohio 43207. | | | | |
| Ohio | (C), Willoughby, Lake County (Docket No. FI-5226). | Chagrin River | Downstream corporate limits | *592 |
| | | | Just downstream from Lakeland Freeway | *603 |
| | | | Just upstream of St. Clair Street | *608 |
| | | | Just upstream of Mentor Avenue | *611 |
| | | | Just downstream of Johnnycake Ridge Road | *614 |
| | | | Just upstream of Johnnycake Ridge Road | *618 |
| | | | About 740 feet upstream of Riverside Drive | *621 |
| | | East Branch Chagrin River | At mouth | *618 |
| | | | 3,600 feet upstream of Interstate 90 | *621 |
| | | | Just downstream of Kirtland Country Club Dam | *628 |
| | | | 450 feet upstream of Kirtland Country Club Dam | *631 |
| | | | Upstream corporate limit | *635 |
| | | Lake Erie | Shoreline of Community | *576 |
| Maps available at City Hall, Willoughby, Ohio 44094. | | | | |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Oregon | Portland (City), Multnomah, Clackamas, and Washington Counties FEMA-5815. | Columbia River | Along shoreline approximately 1,000 feet upstream of the confluence with Willamette River | *27 |
| | | | Approximately 250 feet north of the intersection of Northeast 13th Avenue and Marine Drive. | *27 |
| | | Willamette River | Confluence with Columbia Slough | *27 |
| | | | Intersection of Rivergate Boulevard, Union Pacific Railroad, and Columbia Slough with the corporate limits. | *27 |
| | | | Approximately 1,500 feet west along North Victory Boulevard from its intersection with North Denver Avenue. | *27 |
| | | | Intersection of St. John's Bridge and the channel | *28 |
| | | | Intersection of Burlington Northern Railroad and the channel | *28 |
| | | | Intersection of Marquam Bridge and Southwest MacAdam Avenue | *29 |
| | | | Intersection of Sellwood Bridge and the channel | *30 |
| | | Johnson Creek | Upstream side of Southeast Ochoco Street at intersection with channel. | *45 |
| | | | Intersection of Southeast 21st Avenue and Southeast Tenino Street | *51 |
| | | | Approximately 60 feet upstream from center of Southeast Harney Street Bridge over the channel. | *98 |
| | | | Upstream side of Southeast 92nd Avenue at intersection with channel | *139 |
| | | | Intersection of Southeast 97th Avenue and Southeast Ellis Street | *206 |
| | | | Intersection of 110th Drive and Southeast Foster Road | *213 |
| | | | Approximately 1,600 feet northeast of intersection of Southeast Foster Road and 159th Drive. | *248 |
| | | Peninsula Drainage District No. 2. | Approximately 150 feet north of the intersection of Schmeer Road and Minnesota Freeway. | *5 |
| | | | Approximately 1,400 feet east along Gertz Road from its intersection with Vancouver Way | *5 |
| | | | Approximately 600 feet south along Northeast 13h Avenue from its intersection with Gertz Road. | *5 |
| | | Multnomah Drainage District No. 1. | Intersection of 33rd Street and Riverside Way | *17 |
| | | | North side of intersection of Argyle Drive and Northeast 21st Street | *17 |
| | | | Southern side of eastern end of Elrod Road | *17 |
| | | | Intersection of Northeast 47th Avenue and Columbia Slough | *17 |
| | | | Approximately 1000 feet north along Cascade Avenue from its intersection with Lombard Avenue. | *17 |
| | | | Western end of Lombard Street at Airport boundary | *17 |
| | | | Intersection of Northeast Saratoga Street and 98th Avenue | *17 |
| | | | Intersection of Argyle Drive and 11th Avenue | *17 |
| | Maps available at City Hall, 1220 Southwest 5th Avenue, Portland, Oregon. | | | |
| Pennsylvania | Adamstown, Borough, Berks and Lancaster Counties (Docket No. FEMA-5815). | Little Muddy Creek | Downstream Corporate Limits | *450 |
| | | | Private Drive (extended) | *462 |
| | | | Willow Street (Upstream side) | *479 |
| | | | Lancaster Avenue (Upstream crossing) | *497 |
| | | | Upstream Corporate Limits | *500 |
| | | Lees Creek | Downstream Corporate Limits | *456 |
| | | | Upstream Corporate Limits | *462 |
| | Maps available at the Adamstown Fire House, Adamstown, Pennsylvania. | | | |
| Pennsylvania | Bart, Township, Lancaster County (Docket No. FEMA-5813). | West Branch Octoraro Creek | Colerain Corporate Limits | *498 |
| | | | 2,000 feet upstream from Colerain Corporate Limits | *507 |
| | | | Hollow Road (Upstream side) | *516 |
| | | | Mt. Pleasant Road (Upstream side) | *526 |
| | | | 900 feet upstream of Mt. Pleasant Road | *532 |
| | | | Wilson Road extended | *539 |
| | | | Dry Wells Road (Upstream side) | *551 |
| | | | Confluence of Meetinghouse Creek and Nickel Mines Run | *559 |
| | | Meetinghouse Creek | Confluence with West Branch Octoraro Creek and Nickel Mines Run | *559 |
| | | | Lompanter Road (Upstream side) | *563 |
| | | | Conrail (Upstream side) | *573 |
| | | | Valley Road (Downstream side) | *585 |
| | | | Valley Road (Upstream side) | *590 |
| | | | Quarry Road (Upstream side) | *597 |
| | | | Private Road 2,800 feet upstream from Quarry Road (Upstream side) | *605 |
| | | | Hart Road (Upstream side) | *614 |
| | | Nickel Mines Run | Confluence with West Branch Octoraro Creek and Meetinghouse Creek. | *559 |
| | | | Gibble's Mill Road (Upstream side) | *565 |
| | | | Conrail (Upstream side) | *567 |
| | | | Route 372 Valley Road (Upstream side) | *578 |
| | | | Green Tree Road (Upstream side) | *583 |
| | | | Private Road 1,150 feet upstream of Green Tree Road (Upstream side). | *589 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Private Road 1,400 feet upstream of Green Tree Road (Upstream side). | *590 |
| | | | Private Road 1,600 feet upstream of Green Tree Road (Upstream side). | *592 |
| | | | Private Road 3,500 feet upstream Green Tree Road (Upstream side) | *603 |
| | | | State Route 896 Christiana Pike (Downstream side) | *612 |
| | | | State Route 896 Christiana Pike (Upstream side) | *619 |
| | | | Old Dam Road (Upstream side) | *621 |
| Maps available at the Bart Township Building, Quarry Road, Bart, Pennsylvania. | | | | |
| Pennsylvania | Caernarvon, Township, Berks County (Docket No. FEMA-5815). | Conestoga River | Downstream Corporate Limits | *501 |
| | | | Private Road Upstream | *505 |
| | | | Mill Road Downstream | *510 |
| | | | Mill Road Upstream | *514 |
| | | | Township Route 308/Mast Road Upstream | *518 |
| | | | Approximately 1,050 feet upstream of Township Route 308/Mast Road. | *519 |
| | | Tributary No. 1 to Conestoga River. | Mill Road/Township Route 305 Downstream | *503 |
| | | | Private Road Upstream | *508 |
| | | | Pennsylvania Turnpike Downstream | *520 |
| Maps available at the Caernarvon Township Building, Main and Chestnut Streets, Caernarvon, Pennsylvania. | | | | |
| Pennsylvania | Colerain, Township, Lancaster County (Docket No. FEMA-5815). | Ball Run | Upstream side of Maple Shade Road | *397 |
| | | | Approximately 2,700 feet upstream of Maple Shade Road | *425 |
| | | | Approximately 4,800 feet upstream of Maple Shade Road | *453 |
| | | | Approximately 1,500 feet downstream of Upstream Corporate Limits | *477 |
| | | West Branch Octoraro Creek | Approximately 350 feet upstream of extension of Private Road near Octoraro Lake. | *291 |
| | | | Downstream side of Academy Road | *298 |
| | | | Downstream side of Noble Road | *314 |
| | | | Approximately 1,800 feet downstream of Legislative Route 36010 | *340 |
| Maps available at the Colerain Township Building, Route 472, Kirkwood, Pennsylvania. | | | | |
| Pennsylvania | Harmony, Township, Susquehanna County (Docket No. FEMA-5800). | Susquehanna River | Downstream Lanesboro/Harmony Corporate Limits | *907 |
| | | | State Boundary (Upstream) | *914 |
| | | Starrucca Creek | Downstream Lanesboro Corporate Limits | *941 |
| | | | Approximately 2,900 feet upstream of Lanesboro Corporate Limits | *960 |
| | | | Downstream Conrail crossing near Jefferson Junction (Upstream) | *984 |
| | | | Approximately 2,400 feet upstream of Conrail crossing near Jefferson Junction. | *1,005 |
| | | | Downstream crossing of Starrucca Road near Brandt (Upstream) | *1,026 |
| | | | Next upstream crossing of Starrucca Road | *1,037 |
| | | | Upstream Conrail crossing (Upstream) | *1,064 |
| | | | Upstream Township Route 855 | *1,082 |
| | | | Approximately 1,000 feet upstream of Township Route 855 | *1,088 |
| Maps available at the Harmony Township Building, Stevens Point, Pennsylvania. | | | | |
| Pennsylvania | Oakmont, Borough, Allegheny County (Docket No. FEMA-5813). | Allegheny River | Downstream Corporate Limits | *742 |
| | | | Upstream Corporate Limits | *743 |
| | | Plum Creek | Downstream Corporate Limits | *742 |
| | | | 160 feet upstream of Plum Street | *748 |
| | | | Upstream of Conrail Bridge | *755 |
| | | | Dark Hallow Road (extended) | *760 |
| | | | Upstream Corporate Limits | *771 |
| | | | At Conrail Track crossing of Corporate Limits | *776 |
| Maps available at the Oakmont Municipal Building, 5th and Virginia Avenue, Oakmont, Pennsylvania. | | | | |
| Pennsylvania | Quarryville, Borough, Lancaster County (Docket No. FEMA-5813). | Beaver Creek | Downstream Corporate Limits | *456 |
| | | | Downstream of North Church Street Bridge | *457 |
| | | | Downstream of Private Drive | *482 |
| | | | Downstream of Conrail Bridge | *486 |
| | | | Upstream of Conrail Bridge | *489 |
| | | | East State Street Bridge (State Route 372) | *490 |
| | | | Downstream of South Broad Street Bridge | *496 |
| | | | Downstream of East 2nd Street Bridge | *499 |
| | | | Downstream of South Park Avenue | *512 |
| Maps available at the Quarryville Municipal Building, 300 Catherine Street, Quarryville, Pennsylvania. | | | | |
| Pennsylvania | Sadsbury, Township, Lancaster County (Docket No. FEMA-5815). | Williams Run | Downstream Corporate Limits | *473 |
| | | | Private Road approximately 1,500 feet above Corporate Limits (Upstream side). | *478 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | | Private Road approximately 1,000 feet above confluence of Tributary A (Upstream side). | *486 |
| | | | Private Road approximately 430 feet downstream of Williams Run Road (Upstream side). | *503 |
| | | | Williams Run Road (Downstream side) | *505 |
| | | Buck Run | Downstream Corporate Limits | *470 |
| Maps available at the Sadsbury Township Building, White Oak and Noble Roads, Sadsbury, Pennsylvania. | | | | |
| Pennsylvania | Verona, Borough, Allegheny County (Docket No. FEMA-5813). | Allegheny River | Downstream Corporate Limits | *741 |
| | | | Upstream Corporate Limits | *742 |
| | | Plum Creek | At confluence with Allegheny River | *742 |
| | | | Allegheny River Boulevard Upstream | *743 |
| | | | Conrail Spur Line | *745 |
| | | | Upstream Corporate Limits | *749 |
| Maps available at the Borough Building, 601 Allegheny River Boulevard, Verona, Pennsylvania. | | | | |
| Pennsylvania | Wright, Township, Luzerne County (Docket No. FEMA-5813). | Big Wapwallopen Creek | Downstream Corporate Limits | *1,064 |
| | | | Blytheburn Road (Upstream) | *1,068 |
| | | | Confluence of Bow Creek | *1,233 |
| | | | Upstream Corporate Limits | *1,346 |
| | | Watering Run | Confluence with Big Wapwallopen Creek | *1,070 |
| | | | Private Road (Upstream) | *1,186 |
| | | | Legislative Route 40023 (Upstream) | *1,220 |
| | | | State Route 309 (Downstream) | *1,343 |
| | | | State Route 309 (Upstream) | *1,349 |
| | | | Approximately 2,820 feet upstream of State Route 309 | *1,410 |
| | | Bow Creek | Confluence with Big Wapwallopen Creek | *1,233 |
| | | | Legislative Route 40023 (Upstream) | *1,270 |
| | | | Approximately 280 feet upstream State Route 309 | *1,327 |
| | | | Upstream Corporate Limits | *1,347 |
| | | Tributary A | Approximately 300 feet upstream confluence with Bow Creek | *1,327 |
| | | | Upstream Corporate Limits | *1,342 |
| Maps available at the Wright Township Building, 321 South Mountain Boulevard, Mountain Top, Pennsylvania. | | | | |
| South Carolina | Town of Moncks Corner, Berkeley County (FEMA-5799). | California Branch | Approximately 40 feet upstream of California Avenue | *43 |
| | | | Approximately 150 feet upstream of State Highway 6 | *48 |
| | | | Approximately 80 feet upstream of Haynesville Road | *63 |
| Maps available at City Hall, 118 Caroline Street, Moncks Corner, South Carolina 29461. | | | | |
| South Dakota | Flandreau (City), Moody County, FEMA-5815. | Big Sioux River | Intersection of North Eleventh and West Bridge Street | *1,535 |
| | | | 40 feet upstream from center of North Crescent Street | *1,535 |
| | | | Intersection of Water Street and East Second Avenue | *1,541 |
| Maps available at City Office Building, 136 2nd Avenue East, Flandreau, South Dakota. | | | | |
| Texas | City of Gladewater, Upshur and Gregg Counties (FEMA-5799). | Victory Branch | Just upstream of East Lake Drive | *290 |
| | | | Just upstream of Phillips Spring Road | *301 |
| | | Sabine River | Approximately 200 feet upstream of U.S. 271 | *287 |
| | | | At the confluence of Glade Creek | *298 |
| | | Moody Creek | Just upstream of U.S. Highway 80 | *290 |
| | | | Just upstream of Shell Camp Road | *298 |
| Maps available at City Secretary's Office, City Hall, Gladewater, Texas 75647. | | | | |
| Texas | City of Terrell Hills, Bexar County (FEMA-5815). | Crestwood Drive Ditch | Just upstream of Saford Drive | *703 |
| | | | Just upstream of Crestwood Drive (Inlet Crestwood Drive Culvert) | *717 |
| | | | Just upstream of Vandiver Road (Inlet Vandiver Road Culvert) | *733 |
| | | | Just downstream of Morningside Drive (Outlet Morningside Drive Culvert). | *736 |
| | | Tuttle Road Ditch | Approximately 200 feet upstream of Eastern Corporate Limits | *692 |
| | | New Braunfels, Austin Highway, Broadway Drain | Approximately 100 feet upstream of Albany Street | *740 |
| Maps available at Terrell Hills City Hall, 5100 North New Braunfels Street, Terrell Hills, Texas 78209. | | | | |
| Vermont | Essex, Town, Chittenden County (Docket No. FEMA-5796). | Winooski River | Downstream Colchester/Essex Corporate Limits | *218 |
| | | | Downstream Essex/Essex Junction Corporate Limits | *218 |
| | | | Upstream Essex/Essex Junction Corporate Limits | *287 |
| | | | Upstream of Central Vermont Railroad | *290 |
| | | | Confluence of Alder Brook | *292 |
| | | | Upstream of North Williston Road | *295 |
| | | | Upstream Essex/Jericho Corporate Limits | *296 |
| | | Browns River | Downstream Corporate Limits | *459 |
| | | | 12,600 feet upstream of Pettingill Road | *463 |
| | | | Upstream of State Route 128 | *474 |
| | | | Upstream of State Route 15 | *486 |
| | | | Upstream Corporate Limits | *490 |

Final Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | Alder Brook | Confluence with Winooski River | *292 |
| | | | 3,500 feet above confluence with Winooski River | *297 |
| | | | Upstream of Snowmobile Bridge | *337 |
| | | | 10,000 feet above confluence with Winooski River | *355 |
| | | | 14,750 feet above confluence with Winooski River | *398 |
| | | | 16,650 feet above confluence with Winooski River | *409 |
| | | | Downstream of State Route 15 | *443 |
| | | | Upstream of State Route 15 | *449 |
| | | | Upstream of State Route 128 | *473 |
| | | | 1,500 feet upstream of State Route 128 | *474 |
| | Maps available at the Essex Town Office. | | | |
| Vermont | (T), Royalton, Windsor County (Docket No. FEMA-5815). | White River | At the eastern corporate limits | *457 |
| | | | Approximately 4,600 feet upstream of the eastern corporate limits | *463 |
| | | | Approximately 150 feet downstream of State Route 110 | *472 |
| | | | Approximately 150 feet upstream of State Route 110 | *475 |
| | | | Approximately 250 feet downstream of Royalton Road | *489 |
| | | | Just upstream of Royalton Road | *494 |
| | | | Just downstream of Sewall Brook Road | *501 |
| | | | Approximately 150 feet upstream of Sewall Brook Road | *505 |
| | | | Approximately 2,150 feet downstream of western corporate limits | *528 |
| | | | Approximately 1,550 feet downstream of western corporate limits | *532 |
| | | | At the western corporate limits | *535 |
| | | First Branch White River | Mouth at White River | *476 |
| | | | Just upstream of State Route 14 | *485 |
| | | | Just downstream of first of 2 dams | *497 |
| | | | Just upstream of second of 2 dams | *503 |
| | | | Just downstream of first of 2 farm bridges | *508 |
| | | | Just upstream of first of 2 farm bridges | *513 |
| | | | At northern corporate limits | *516 |
| | | Second Branch White River | Mouth at White River | *507 |
| | | | Just downstream of State Route 14 (second crossing) | *516 |
| | | | Just upstream of State Route 14 (second crossing) | *528 |
| | | | At western corporate limits | *530 |
| | Maps available at the Town Clerk's Office, South Royalton, Vermont 05068. | | | |
| Vermont | (T), Wallingford, Rutland County (Docket No. FEMA-5815). | Otter Creek | Northern corporate limits | *554 |
| | | | About 800 feet downstream of Creek Road | *558 |
| | | | Just upstream of Elm Street | *566 |
| | | | Just upstream of Depot Street | *572 |
| | | | About 500 feet downsteam of U.S. Route 7 | *577 |
| | | | Just upstream of Vermont Railway (upstream of Hartsboro Road) | *583 |
| | | | About 1,600 feet downstream of Vermont Railway (downstream of South Wallingford Brook). | *589 |
| | | | About 90 feet downstream County Route 99 | *618 |
| | | | About 75 feet upstream County Route 99 | *628 |
| | | | Southern corporate limits | *644 |
| | | Roaring Brook | Confluence with Otter Creek | *570 |
| | | | About 40 feet downstream of Vermont Railway | *576 |
| | | | About 40 feet upstream of Railroad Street | *580 |
| | | | Just upstream of Main Steet | *603 |
| | | | About 2,200 feet upstream of Main Street | *678 |
| | | Mill River | Northern corporate limits | *1,037 |
| | | | Just upstream of Green Mountain Railroad | *1,107 |
| | | | Just downstream of State Route 155 | *1,173 |
| | | | Southern corporate limits | *1,199 |
| | | Homer Stone Brook | Confluence with Otter Creek | *633 |
| | | | About 35 feet downstream of Vermont Railway | *635 |
| | | | Just upstream of Vermont Railway | *639 |
| | | | Just upstream of Homer Stone Road | *671 |
| | | | About 370 feet upstream of Homer Stone Road | *695 |
| | Maps available at the Town Clerk's Office, Wallingford, Vermont 05773 | | | |
| West Virginia | City of Williamson, Mingo County (FEMA-5813). | Tug Fork | Just upstream of U.S. Highway 119 (River Mile 58.1) | *667 |
| | | | Just upstream of Norfolk and Western Railway (River Mile 59.3) | *670 |
| | | | Confluence of Tug Fork and Sycamore Creek (River Mile 59.5) | *673 |
| | Maps available at City Clerk's Office, City Hall, 2 East Third Avenue, Williamson, West Virginia 25661. | | | |
| Wisconsin | (V), De Soto, Vernon and Crawford Counties (Docket No. FEMA-5800). | Mississippi River | About 2,250 feet downstream of the Vernon/Crawford County boundary. | *635 |
| | | | About 5,350 feet upstream of the Vernon/Crawford County boundary | *635 |
| | Maps available at Village of De Soto, De Soto, Wisconsin 54624 to the attention of Mr. Carl Crane. | | | |

(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)

Issued: August 7, 980.

Gloria M. Jimenez,

*Federal Insurance Administrator.*

[FR Doc. 80-24977 Filed 8-19-80; 8:45 am]

BILLING CODE 6718-03-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 34)]

### Household Goods Transportation; (Storage-in-Transit Charges)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of final rule.

**SUMMARY:** The Commission is adopting a rule which will change the way that storage-in-transit (SIT) charges are assessed on household goods moving in interstate or foreign commerce. Assessment of SIT charges on a daily rather than 30-day basis will be required.

**DATES:** The rule will become effective November 17, 1980. Comments addressing our jurisdiction to prescribe the SIT rule are due on or before September 18, 1980.

**ADDRESS:** Send comments and 10 copies, if possible, to: Secretary, Room 5356, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Martin E. Foley (202) 275–7348. Copies of the complete decision are available from the Secretary, Interstate Commerce Commission, Washington, DC 20423.

**SUPPLEMENTARY INFORMATION:** This proceeding was instituted by a notice of proposed rule (NPR) published in the Federal Register on May 25, 1979 (44 FR 30387, revised at 44 FR 75194), to consider the propriety of the practice of motor carriers and freight forwarders of household goods moving in interstate or foreign commerce of assessing charges for SIT in increments of 30 days. A rule was proposed which would require that SIT charges be assessed on a daily basis.

As indicated in our NPR, we receive complaints in which complainants state that the present practice of charging for SIT is unfair. In this rulemaking we sought justification for the continuation of the present practice and comments concerning the proposed rule.

After reviewing all the comments and the justification furnished we concluded that the present practice of charging for SIT on a 30-day basis was unreasonable. We decided that adoption of the proposed rule is a reasonable alternative to the present practice. While no provision was made in the proposed rule for SIT of less than one full day, the proposed rule has been modified to require that charges for SIT must be based on an amount per day or fraction thereof.

Our revised notice in this proceeding corrected an inadvertent omission of the citations of the legal authorities under which the rule was proposed by including reference to 5 U.S.C. 553 and 49 U.S.C. 10321. However, a comment was received which contends that the revised notice still failed to give proper reference to the appropriate legal authority, as required by the Administrative Procedure Act. It was also submitted that the Commission does not have the legal authority to adopt the proposed rule, however, no argument supporting this submission was offered.

It has been clear from the outset of this proceeding that the Commission had doubts about the reasonableness of the practice of assessing a standard 30-day rate for storage-in-transit and was considering promulgating a rule requiring storage-in-transit charges to be based on the actual number of days goods remain in storage. Thus, it should have been obvious that we were proceeding under 49 U.S.C. 10701(a) and 10704(a)(1) in conducting this investigation, and our failure to specifically refer to those sections should not have precluded parties from effectively challenging our exercise of jurisdiction. However, because those sections were not specifically set forth in our notice of rulemaking (which we regard as a purely technical defect which would not invalidate the notice) and out of an abundance of caution, we will permit all parties desiring to do so to file comments, within 30 days of the date of this notice, addressed to our jurisdiction to prescribe the subject SIT regulation. All material received will be considered, and we will enter a judgment concerning the statutory authority issue. Appropriate revisions in the rule or a stay of its effective date will be published, if necessary. Unless revised or stayed, the rule shown below will become effective November 17, 1980.

Accordingly, § 1056.3(b) of Chapter X of Title 49 of the Code of Federal Regulations is revised to read:

**§ 1056.3 Accessorial or terminal services; tariffs providing therefor; containers, packing, and unpacking charges.**

* * * * *

(b) The separate tariff charges so established for containers, packing, and unpacking shall provide for separate charges for containers, for packing, and for unpacking stated in amounts per container. Charges for other services shall be separately stated on a unit or hourly basis, whichever is appropriate.

Charges for storage-in-transit shall be stated in an amount per 100 pounds per day or fraction thereof. Tariffs may state an hourly labor charge applicable to miscellaneous labor service performed at the request of a shipper in connection with the transportation, when a rate is not separately stated in the tariff for the service so requested.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

The rule adopted in this proceeding was promulgated under authority contained in 5 U.S.C. 553, 49 U.S.C. 10321, 10721(a), and 10704(a)(1).

Dated: July 17, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-24243 Filed 8-18-80; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 45, No. 163
Wednesday, August 20, 1980

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 ENERGY

### Economic Regulatory Administration

### 10 CFR PART 212

[Docket No. ERA-R-80-26]

### Maximum Lawful Selling Price for Unleaded Gasoline; Change in Hearing Schedule

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of change in hearings schedule.

**SUMMARY:** On August 8, 1980 the Economic Regulatory Administration of the Department of Energy issued a Further Notice of Proposed Rulemaking and Public Hearing (45 FR 54694, August 15, 1980) concerning several methods for imputing the May 15, 1973 selling price for unleaded gasoline. Two public hearings were announced in the Notice, one is Los Angeles, California, on September 5, 1980, and one in Washington, D.C., on September 11, 1980, and are hereby changed.

**DATES:** Hearing dates: Los Angeles, California, September 18, 1980; Washington, D.C., September 24, 1980. Requests to speak by 4:30 p.m., September 11, 1980, for Los Angeles hearing; September 17, 1980, for Washington, D.C.

**HEARING LOCATIONS:** Los Angeles hearing: Los Angeles Convention Center, 1201 South Figueroa Street, Room 212-A, Los Angeles, California, 90015. Washington hearing: Room 2105, 2000 "M" Street, N.W., Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:**

William Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4055.

Lorraine Hall (Office of Public Hearings), Economic Regulatory Administration, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3971.

Chuck Boehl (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 7108, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3220.

**SUPPLEMENTARY INFORMATION:** If you have any interest in the matters to be discussed or represent a group or class of persons that has an interest, you may request an opportunity to make an oral presentation by 4:30 p.m. on September 11, 1980, for the Los Angeles hearing and September 17, 1980, for the Washington, D.C. hearing. You should also provide a phone number where you may be contacted through the day before the hearing. If you are selected to be heard, you will be notified before 4:30 p.m. on September 15, 1980, for the Los Angeles hearing and September 19, 1980, for the Washington, D.C. hearing, and are requested to submit one hundred copies of your statement to the hearing location by 8:30 on the morning of the hearing.

Issued in Washington, D.C., August 15, 1980.

F. Scott Bush,

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

[FR Doc. 80-25328 Filed 8-19-80; 8:45 am]
BILLING CODE 6450-01-M

### 10 CFR Parts 500, 503, 504, 505, and 506

[ERA-R-80-24]

### Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption; Public Hearing Locations

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Public hearing locations.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby announces the locations for the public hearings on its proposed rule to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C.A. § 8301 et seq. (FUA or the Act) regarding cogeneration. Notice of the public hearings on cogeneration was published in the Federal Register (45 FR 53368, August 11, 1980).

**DATES:** Public hearings for cogeneration will be held on September 25, 1980, and, if necessary, September 26; October 6, 1980, and, if necessary, October 7; and, October 9, 1980, and, if necessary, October 10.

**ADDRESSES:** The hearings will be held at the following locations:

*City, Hearing Date, Location, and Request to Speak*

San Francisco, CA. Thursday, Sept. 25, 1980. Ramada Inn, 590 Bay Street, Leland Stanford Rm., San Francisco, CA. Dept. of Energy, 333 Market Street, 6th Floor, San Francisco, CA 94105, (415) 764-7027. Contact: Ms. Terry Osborn.

Boston, Ma. Monday, Oct. 6, 1980. John W. McCormack, Post Office and Courthouse Bldg., 1 Post Office Sq., Room 208, Boston, MA. Dept. of Energy, 150 Causeway Street (Room 700), Boston, MA 02114. Contact: Mr. Bob Ruttenberg.

Houston, TX. Thursday, Oct: 9, 1980. Allen Park Inn, 2121 Allen Parkway, Steamboat Room, Houston, TX. Dept. of Energy, 2626 W. Mockingbird Lane, P.O. Box 35228, Dallas, TX 75235, (214) 767-7745. Contact: Mr. Mac Lacefield.

**FOR FURTHER INFORMATION CONTACT:**

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, 202-653-4055.

Dorothy M. Hamid (Public Hearings Division), Economic Regulatory Administration, Department of Energy, Room B-210, 2000 M Street, NW., Washington, D.C. 20461, 202-653-3974.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 7002, 2000 M Street, NW., Washington, D.C. 20461, 202-653-3217.

Robert L. Davies (Office of Fuels Conversion), Economic Regulatory Administration, Department of Energy, Room 3002, 2000 M Street, NW., Washington, D.C. 20461, 202-653-3649.

Alan Starr (Office of Utility Systems), Economic Regulatory Administration, Department of Energy, Room 4103D, 2000 M Street, NW., Washington, D.C. 20461.

G. Randolph Comstock (Office of General Counsel), Department of

Energy, Room 6–G–087, 1000 Independence Avenue, SW., Washington, D.C. 20461, 202–252–2967.

Issued in Washington, D.C., August 14, 1980.

F. Scott Bush,

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

[FR Doc. 80–25323 Filed 8–19–80; 8:45 am]

BILLING CODE 6450–01–M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 107

### Proposed Changes to Regulations Governing the Small Business Investment Company Program

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This proposal would amend 13 CFR § 107.101(d)(1)(i), and 107.101(d)(2)(i).

The amendment to § 107.101(d)(1)(i) is merely editorial, deleting a reference to Private Capital of $150,000 which since October 1, 1979, has been obsolete. The minimum Private Capital required by the Small Business Investment Act (Act) since that date has been $500,000.

The amendment to § 107.101(d)(2)(i) reflects an obligation imposed upon SBA by amendments to the Economic Opportunity Act of 1964, to entertain License applications submitted by entities capitalized entirely with nonprivate funds granted by the Community Services Administration.

**DATES:** A sixty (60) day comment period (October 20, 1980) will exist for submission of comments on these proposed rules.

**ADDRESS:** Comments should be submitted to Peter F. McNeish, Deputy Associate Administrator for Investment, 1441 L Street, NW., Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Mr. McNeish at the above address, Tel. 202/653–6584.

**SUPPLEMENTARY INFORMATION:** The proposed amendment of § 107.101(d)(1)(i) is self-explanatory. Every licensee has, since October 1, 1979, been required to have not less than $500,000 of Private Capital.

The Economic Opportunity Act of 1964, as amended by Pub. L. 95–468, has been interpreted to require SBA to accept as Private Capital the entire amount of any grant made by the Community Services Administration to a "community development corporation" (as defined in 42 U.S.C. 2981a and implementing regulations) for the purpose of capitalizing a section 301(d) Licensee, even though the grant proceeds may constitute the entire capitalization of the applicant-Licensee. In other words, SBA may not, in the case of a Licensee application submitted by a corporate subsidiary of a community development corporation, require that the applicant have any truly private funds in its capitalization; or impose any such requirement as a condition precedent to SBA funding. The proposed amendment to § 107.101(d)(2)(i) merely reflects this interpretation of the Economic Opportunity Act, as amended.

Accordingly, pursuant to the authority contained in section 308 of the Small Business Investment Act, as amended, 15 U.S.C. 661, it is proposed to amend Part 107 of Title 13 of the Code of Federal Regulations as follows:

1. Section 107.101(d)(1)(i) would be amended to read as follows:

**§ 107.101 Operational requirements.**

* * * * *

(d) *Minimum Capital*—(1) *General.* Every Licensee shall have:

(i) Private Capital of at least $500,000 (for consideration for issuance of Licensee's securities see § 107.805(a)).

* * * * *

2. Section 107.101(d)(2)(i) would be amended to read as follows:

**§ 107.101 Operational requirements.**

* * * * *

(d) * * *

(2) *Nonprivate funds for Licensees.* (i) Funds directly or indirectly granted to a Licensee by a Federal or State agency, authority, or instrumentality pursuant to a statutory authorization may be included in a Licensee's Private Capital for purposes of sections 302(a), 303(c) and 306 of the Act: *Provided, however,* That, except in the case of funds granted by the Community Services Administration to a community development corporation (as defined in 42 U.S.C. 2981a), the minimum capital of $500,000 specified by section 302(a)(1) of the Act may not include nonprivate funds.

Dated: August 11, 1980.

William H. Mauk, Jr.,

*Acting Administrator.*

[FR Doc. 80–25332 Filed 8–19–80; 8:45 am]

BILLING CODE 8025–01–M

### 13 CFR Part 124

### Clarification of Eligibility for Section 8(a) Program

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would amend 13 CFR 124.1–1(c)(2)(iii) to specify that Community Development Corporations (CDC's) as defined in 42 U.S.C. 2981a, and implementing regulations promulgated thereunder, may own more than a 49 percent interest in a concern applying for admission to the section 8(a) program, pursuant to some specified restrictions. This proposed regulation alters and amplifies upon the present § 124.1–1(c)(2)(iii) which presently prescribes the ability of certain entities to maintain ownership interest in applicants for the section 8(a) program.

**DATES:** A sixty (60) day comment period from the date of publication (October 20, 1980) will exist for this proposal.

**ADDRESS:** Comments should be submitted to William A. Clement, Jr., Associate Administrator for Minority Small Business and Capital Ownership Development, 1441 L Street, NW., Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** William A. Clement, Jr., at the above address, Tel. 202/653–6407.

**SUPPLEMENTARY INFORMATION:** Pursuant to a Department of Justice interpretation of section 742(a)(2) of the Economic Opportunity Act, as amended, 42 U.S.C. 2985(a)(2) and a court order, the Small Business Administration (SBA) has been required to promulgate proposed regulations which would insure the availability of the section 8(a) program to community development corporations (CDC's) and businesses which CDC's own and/or control. The following proposed regulations seek to implement both the interpretation and the court order.

In this regard, SBA will consider a concern applying for admission to the section 8(a) program which is more than 49 percent owned by a CDC to be eligible for the program pursuant to certain conditions which SBA feels are necessary to protect the integrity of the program and to uphold the spirit and letter of 15 U.S.C. 637(a)(4).

The proposed regulation requires that the socially and economically disadvantaged managers of the applicant must retain practical day-to-day control of the business. Also, the same socially and economically disadvantaged individuals must obtain ownership and control of more than 50 percent interest in the concern after a period of no more than five years. In this manner, the purposes of both the Economic Opportunity Act and the

Small Business Act will best be served. Accordingly, 13 CFR 124.1-1(c)(2)(iii) is proposed to be amended to read as follows:

§ 124.1-1 The section 8(a) program.

* * * * * *

(c) * * *

(2) * * *

(iii) Pursuant to 42 U.S.C. 2985a(a)(2), a community development corporation, as defined in 42 U.S.C. 2981(a), and implementing regulations promulgated thereunder, may own more than a 49 percent interest in an applicant section 8(a) business concern, provided that:

(A) Prior to the admission of such an applicant section 8(a) business concern into the section 8(a) program, the community development corporation which owns more than a 49 percent interest in the applicant concern must transfer by contract, voting trust, cumulative voting agreement, proxy, power of attorney or other appropriate vehicle to the socially and economically disavantaged individuals who manage the applicant section 8(a) business concern all control over the activities of the concern which accrues to the community development corporation as a result of its ownership interest. Such transfer must be approved by the AA/MSB-COD prior to and as a condition of admission of the applicant section 8(a) concern into the section 8(a) program.

(B) In addition to paragraph (c)(2)(iii)(A) of this section, a written divestiture agreement between the community development corporation and the applicant section 8(a) concern, must be executed prior to admission of the concern into the section 8(a) program. Such agreement must be approved by the AA/MSB-COD as a condition of the concern's admission into the program. Such divestiture agreement must result in the ownership interest of the community development corporation in the applicant section 8(a) concern being reduced to less than 50 percent over a period not to exceed five years. One condition of such divestiture agreement must be a provision allowing purchase of the community development corporation's interest by the section 8(a) concern at a prescribed price at some time during the term of the divestiture agreement.

* * * * *

Dated: August 11, 1980.

William H. Mauk, Jr.,

*Acting Administrator.*

[FR Doc. 80-25333 Filed 8-19-80; 8:45 am]

BILLING CODE 8025-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Ch. I

### Contract Market Rules and Practices Governing the Imposition and Maintenance of Price Limits; Advance Notice of Proposed Rulemaking; Public Comment

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission is announcing its intent to consider engaging in rulemaking which would affect contract market rules and practices governing the imposition and maintenance of price limits. Price limits establish ranges within which daily prices of futures contracts are permitted to fluctuate, thereby limiting short term price volatility. In doing so, however, price limits may potential artificially prevent futures markets from reflecting the fair market value of the futures contracts to which price limits apply. The Commission requests comment on the function of current price limit rules and practices of the designated contract markets and on whether rulemaking by the Commission concerning price limits would promote the purposes of the Commodity Exchange Act. The Commission believes that consideration of whether to engage in rulemaking affecting contract market methods for imposing price limits is appropriate at this time in view of the substantial legal and economic policy issues summarized below.

**DATE:** Comments must be received on or before November 18, 1980.

**ADDRESS:** Interested persons should submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Office of the Secretaries; Telephone: (202) 254-6314.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Rock, Esq., Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commodity Futures Trading Commission ("Commission") is reviewing the extent to which price limits serve a beneficial regulatory purpose in the futures industry. Price limits establish a range within which the daily price of a futures contract in a particular month is permitted to fluctuate. Trading is prohibited at any price outside of the applicable price range, which is based on the closing price or clearinghouse settlement price of the previous business day plus or minus a specified amount set by the exchange for each futures contract.[1]

Some futures contracts trade without price limits in the spot month. For example, the current month in the financial instrument futures contracts and the metal futures contracts trade on the Chicago Board of Trade ("CBT") without price limits. The current month in each futures contract on the Commodity Exchange, Inc. ("Comex") trades without price limits.[2] This procedure allows market participants to trade in at least one contract month where futures prices will be able to reflect prices in the cash market.

Generally, exchanges have sought and received Commission approval to expand price limits and establish variable price limit systems when confronted with periods of extended price volatility. While the Commission has not adopted a formal policy governing price limits, it has encouraged exchanges to adopt variable limits.[3]

Many exchanges have variable price limit provisions which automatically expand price limits based on some combination of limit and less-than-limit settlement prices on prior days. For example, the CBT has a variable price limit rule under which price limits for all months of a grain contract are automatically increased by 150 percent when three or more delivery months of one crop year of a given contract move limit up or down respectively in three successive trading sessions.[4]

The Chicago Mercantile Exchange ("CME") has implemented a price limit approach which permits a closer relationship between prices in the cash

[1] For example, if the November soybeans contract closes at $5.64 and the limit is 30 cents, that futures contract may be traded only within the range of $5.34 and $6.94 on the following day. For soybeans contracts these price limits do not apply on or after the first notice day of the expiring contract.

[2] *See e.g.*, Chicago Board of Trade regulations 1008.01, 1508.01 and X1508.01 and Commodity Exchange, Inc. copper rule 5, silver rule 5, gold rule 5 and zinc rule 5. The CBT, in its submission concerning the elimination of price limits in current months in its gold and silver contracts, stated that "these amendments are necessary in order that there is (sic) always a month which is allowed to reflect the cash market and to stay competitive in the metals futures markets." Letter from Thomas R. Donovan, Secretary, Chicago Board of Trade to the Executive Secretariat of the Commission dated August 28, 1979.

[3] Commission meeting on August 29, 1978.

[4] CBT regulation 1007.01B. The limits would remain at 150 percent for successive periods of three business days until three or more contracts in a crop year do not close at the limit on one day during that period. When three or more contract months do not close at the limit, the price limits would revert to their original levels at the end of that three day period.

forward and futures markets in foreign currencies by allowing price limits to be removed for one day whenever a contract month closes at the daily price limit in the same direction for four successive business days. After one day of trading without limits, the normal limits again become effective on the sixth trading day. In addition, the Commission has approved, pursuant to section 5a(12) of the Act,[5] the proposal of the New York Futures Exchange, Inc. ("NYFE") to trade its foreign currency contracts without any price limits.[6]

The Commission has the responsibility for reviewing and approving exchange rules pursuant to section 5a(12) of the Act, the authority to engage in rulemaking pursuant to section 8a(5) of the Act,[7] and the authority to alter or supplement contract market rules pursuant to section 8a(7) of the Act.[8] Traditionally, the Commission has deferred to the discretion of the respective exchanges on whether or not to impose price limits and at what level. The Commission's ultimate decision of whether to adopt rules altering exchange methods of imposing price limits will involve a balancing of the legal and economic policy issues which are discussed below.

### Arguments for Price Limits

The primary argument supporting price limits appears to be that such limits restrict intra-day price movements and, thus, limit the extent to which market participants may overreact to daily news events. In this manner, limits potentially diminish price volatility by providing the market with a cooling off mechanism in emotional situations caused by newsworthy events such as severe weather conditions, political upheaval or other occurrences of national or international significance. Such restriction of daily price movements results in a number of other benefits which have been cited by supporters of price limits.

First, price limits provide a form of financial protection for clearing members, futures commission merchants ("FCMs") and customers in cases of sudden unidirectional price moves. For FCM's the financial protection provided by price limits acts as a safety net, particularly during periods where risk exposure of their proprietary and customer positions is increased due to the market volatility.[9] Clearing members can be assured that the amount of margin they might have to submit to the clearinghouse on any one day will not exceed the value represented by an adverse limit move.[10] Customers also are assured that the amount of reduction in their accounts on any one day will be limited to the value represented by an adverse limit move.

The Commodity Futures Trading Commission Advisory Committee on the Economic Role of Contract Markets ("Advisory Committee") felt that the purpose underyling price limits was to protect the financial integrity of member firms and clearinghouses;[11] that is, price limits place a ceiling on the risk confronted by member firms and clearinghouses and provide member firms and clearinghouses with an opportunity to collect additional funds in an orderly and unburdensome manner prior to the next day's trading. To the extent that price limits permit persons to commit funds to the futures markets in a more orderly manner and prevent sudden, excessive payments of maintenance margin or payouts of excess margin over short periods of time, they may reduce the risks borne by clearing members and clearinghouses and thereby benefit the public and the industry.

Furthermore, price limits are frequently cited as justifying the establishment or maintenance of lower margin requirements, which are viewed as promoting market liquidity.[12] Since price limits place a daily ceiling on the risk confronted by member firms and clearinghouses and provide member firms and customers with the opportunity to submit funds in orderly limited installments, lower margin requirements may be justified.[13] One result of eliminating or liberalizing price limits would be that FCMs, clearinghouses and exchange might feel compelled to increase margin requirements to offset the additional risks involved in trading.[14]

### Arguments for Altering Methods of Imposing Price Limits

Price limits directly interfere with free market price determination, which is one of the key economic purposes of future trading.[15] Futures markets provide a forum in which trading is conducted by open outcry and from which news of transactions is immediately disseminated worldwide. These prices are estimates of the future value of commodities. To the extent that futures markets quickly and accurately assess changes in supply and demand forces the futures prices quoted are useful in guiding production and consumption decisions throughout the world.[16]

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[5] 7 U.S.C. 7a(12) (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405, section 12, 92 Stat. 871 (1978).

[6] The NYFE, in its contact market designation submission to the Commission, referred to the price volatility in foreign exchange markets and the absence of daily price limits in the cash or forward market to justify its proposal. The Commission noted that the absence of price limits would permit the futures market to serve its economic purpose at all times, regardless of volatile movements in the cash market. To the extent that the cash market in currencies acts as the primary price discovery vehicle, price limits in the futures market would inhibit the ability of the futures market to reflect the economic realities of the cash market. Letter from Frank J. Jones, Senior Vice President, New York Futures Exchange, Inc. to the Office of the Secretariat of the Commission dated April 3, 1980.

[7] 7 U.S.C. 12a(5) (1976).

[8] 7 U.S.C. 12a(7)(1976).

[9] The safety net provided by price limits, however, only limits the risk in the short-term and does not decrease the long-term effects of a sustained price movement, which may necessitate that FCMs infuse additional capital. As noted above, however, price limits allow firms to infuse such capital as necessary in a more orderly manner.

[10] This is known as a variation margin call. This amount is applied to the settlement for the day and does not go into the standing or initial margin account.

[11] Commodity Futures Trading Commission Report of the Advisory Committee on the Economic Role of Contract Markets, Gary L. Seevers, Chairman, (July 17, 1976) at 43 (hereinafter cited as Advisory Committee Report).

[12] *Id.* at 44. However Messrs. Jiler and Scheu, members of the Advisory Committee, commented that the impact of price limits on market liquidity, price discovery and clearinghouses viability should be carefully evaluated over time. *Id* at 45.

[13] Futures exchanges set the minimum initial margin requirements that members must charge customers. Individual commission houses set margin requirements for customers which may be above the exchange's minimum levels.

[14] For example, in determining to trade its foreign currency contracts without price limits, the NYFE stated its belief that: the advantages to be derived from trading without price limits are greater than the disadvantages of higher margins, and in particular cases, higher margins may be desirable, in that they may discourage excessive speculation by small, less well-financed traders. To some extent, the clearing organization and clearing members may use tools other than higher margins, as discussed below, to assure protection.

The NYFE represented to the Division of Trading and Markets, that it will set margins for the foreign currency contracts "on the basis of actual, past and expected futures price movements, presumbably at a level equal to a fraction, probably quite high, of experienced daily price movements."

Letter from Frank J. Jones, Senior Vice President, the New York Futures Exchange, Inc. to the Office of the Secretariat of the Commission dated April 3, 1980.

[15] Section 3 of the Act, 7 U.S.C. 5 (1976), provides in pertinent part that: Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities in interstate commerce.

[16] The Advisory Committee Report noted that futures exchanges provide an institutional framework around which and through which a variety of marketing functions could be organized. These included pricing, hedging, price discovery, resource allocation and information collection and dissemination. Dr. Ferguson stated the following: I

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Section 5 of the Act [17] sets forth in broad terms the test for designation as a contract market, including a requirement that any board of trade seeking designation demonstrate that transactions for future delivery in the commodity for which designation is being sought will not be contrary ot the public interest. Section 6 of the Act [18] requires any board of trade seeking designation to provide the Commission with "a sufficient assurance" that it will continue to comply with the requirements of sections 5 and 5a, among other sections of the Act. Moreover, section 6b of the Act [19] and Commission regulation 1.50 [20] require a board of trade, after designation to demonstrate continued compliance with the requirements, *inter alia*, of sections 5 and 5a of the Act. Guideline 1 [21] sets forth the particular findings an exchange must make to justify its initial and continued designation, consistent with section 5 of the Act. For example, it is necessary for the contract market to meet the test of "economic purpose." Thus, any board of trade must provide evidence that: [22]

1. The prices involved in transactions for future delivery in the commodity for which such designation is sought are, or reasonably can be expected to be, generally quoted and disseminated as a basis for determining prices to producers, merchants, or consumers of such commodity or the products or byproducts thereof, or

2. Such transactions are, or reasonably can be expected to be, utilized by producers, merchants, or consumers engaged in handling such commodity (including the products, byproducts or source commodity thereof) in interstate (including foreign) commerce as a means of hedging themselves against possible loss through fluctuations in price.[23]

The Commission's Advisory Committee believed that efficient price relationships would not be achieved if futures markets do not function properly.[24] For example, improperly drawn contract specifications such as price limit rules could impede the discovery of competitive prices which best represent the weighted opinion of what traders believe prices should be in the future, given today's information.

Futures markets provide a reference for use in arranging commercial transactions at competitively determined prices. The widespread dissemination of exchange-generated prices fosters competition in the establishment of current cash values for commodities in many localized markets as well as aiding the establishment of market values of productive services such as storage, transportation and processing.[25]

Accordingly, section 5 of the Act conditions the designation of any board of trade as a "contract market" on the finding that the futures contracts traded on it would be located at a terminal market where cash transactions occur in sufficient volume to accurately reflect the general value of the commodity.

The imposition of price limits on futures contracts restricts the establishment of futures prices which fairly reflect the value of underlying commodities. While price limits thus place a daily ceiling on the risk exposure of clearinghouses, member firms and customers, their existence over a prolonged period of time where significant price movements have occurred merely serves to delay the adjustment of futures contract prices to economically realistic price levels.[26]

Further, under section 4c(a)(C) of the Act,[27] it is unlawful for any person to offer to enter into, to enter into or to confirm the execution of any transaction for hedging, determining basis or delivery purposes "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price." This section expresses a Congressional intent to require that futures prices reflect actual supply and demand forces rather than artificial forces. To the extent that price limits artificially affect futures prices, fair, true and bona fide futures prices cannot be established.

The influx of temporary emergency rules and amendments to price limit rules from exchanges to the Commission in response to recent price fluctuations demonstrates that price limits may at times substantially impede the reflection of supply and demand forces on futures prices. For example, the New York Coffee, Sugar and Cocoa Exchange, Inc. recently adopted wider price limit rules in sugar after narrowing price limits in sugar only two years ago.[28] The expanded price limit rules were adopted in response to what the Exchange cited as "the recent [price] increases in both the Sugar No. 11 and Sugar No. 12 Contracts and the corresponding increased probability [of limit moves] in these markets which have made currently daily price limits unrealistic."[29]

Further, on October 22, 1979, the Board of Directors of the Chicago Board of Trade adopted a temporary emergency rule which expanded price limits for its contracts in financial instruments.[30] The Board of Trade justified its action by stating:

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concur with the finding that the operation of the markets in futures contracts does generate benefits to the general public by making the economy somewhat more efficient than would otherwise be the case. In order to achieve the kinds of public benefits that effectively operating markets in commodity futures can provide to the public, the CFTC should seek to assure as nearly as possible unrestricted participation in the markets to avoid all constraints upon the free play of competition, the minimization of transactions costs and the dissemination of the maximum of public information.

[17] 7 U.S.C. 7(a) (1976), which provides in pertinent part that: The Commission is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity.

[18] 7 U.S.C. 8 (1976).

[19] 7 U.S.C. 8b (1976).

[20] 17 CFR 1.50 (1979).

[21] *See* 40 FR 25849 (June 19, 1975). *See also* CCH Comm. Fut. L. Rep. ¶6145.

[22] *See* Guideline 1 appearing at 40 FR 25849 (June 19, 1975) and CCH Comm. Fut. L. Rep. ¶6145.

[23] Conference Report, S. Rep. No. 93-1194, 93d Cong., 2d Sess. 36 (1974).

[24] To the extent that futures markets are efficient markets (i.e. markets which accurately reflect all relevant public information) futures markets properly perform their price discovery function. Price limits, however, by their nature inhibit the markets from operating in the most efficient manner and may deter the use of futures markets as a price discovery vehicle.

[25] Advisory Committee Report, *supra* at 12 and 13.

[26] In order to obtain a true picture of the financial condition of FCMs during the recent silver situation, the Commission, exchanges and clearinghouses found it necessary to adjust the value of FCMs' proprietary and customer positions in distant months to reflect their value marked to the spot month price.

[27] 7 U.S.C. 6c(a)(C) (1976).

[28] New York Coffee, Sugar and Cocoa Exchange, Standing Resolution R-34 and new Standing Resolution of the Board of Managers of the Coffee, Sugar and Cocoa Exchange. The variable daily price limit rule, as amended and approved by the Commission, pursuant to section 5a(12) of the Act, on May 15, 1980, provides for maximum daily price limits to increase at intervals of 50 points from the normal limit of 50 points to a maximum of 200 points, whenever the settlement prices for the first three trading months following the spot month move the applicable limit for three successive days in the same direction. Reduction of price limits occurs in stages until the price limit returns to 50 points.

In June 1978, the Exchange adopted amendments to the Standing Resolutions which reduced limits of one cent per pound above or below the settlement price of the preceding day to one-half cent per pound.

[29] Letter from Laurence S. Youell, Vice President and Secretary, New York Coffee, Sugar & Cocoa Exchange, Inc. to Jane K. Stuckey, Executive Secretariat of the Commission dated March 26, 1980.

[30] Five days earlier the CBT submitted to the Commission permanent changes in the price limit rules for its 30-Day and 90-Day commercial paper contracts. The CBT justified the amendments by stating that although price limits prevent

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The effect of increasing the daily trading limits in these contracts will be to allow the cash futures basis to be more accurately reflected. The wider trading limits will stop large price movements from preventing futures markets from fulfilling their hedging and price determining roles. Without these changes, cash market participants would be unable to transfer risk through futures trading at a time when the desire to hedge is at its greatest. Also, these changes will enhance intermarket spreading; thus, providing further stability to these markets.[31]

The recent fluctuations in the price of silver further demonstrate that current price limit rules often make it difficult for futures prices to reflect spot prices. On September 4, 1979, the Commodity Exchange Inc. adopted an emergency rule which doubled the maximum permissible price limits in silver.[32] On November 15, 1979, the Commission approved, under section 5a(12) of the Act, a permanent change in the Comex silver price limit rule which thereafter set the price limit at forty cents per ounce.[33] On the same day, the Commission granted approval of amendments to the Comex permanent price limit rules for 90-Day U.S. Treasury bills, copper and zinc as well as silver.[34] These changes were designed to mitigate the effects of locked limit markets.

Price limits may also deny participants the opportunity to establish or liquidate futures positions when prices are at the applicable limits and exacerbate the misalignment of cash and futures prices. For example, when the price of a futures contract reaches its daily limit, either up or down, no further trades in that contract month can be made beyond the limit on that day. Further trading, however, may take place that day at the limit price or within the permitted price range established for that trading day. If prices should reach the limit down, and if there are no bids to buy at this price, a trader with a long position in the market and wishing to sell cannot liquidate his position through a direct transaction. Under such circumstances, a trader can be literally "locked in" a market, unable to liquidate his position unless there is another trader willing to buy or sell; as the case may be, at the limit price, or he is willing to engage in a spread transaction designed to liquidate the position in the month locked at the limit.[35]

Fear of being locked in the market may inhibit potential market participants from using the futures markets (*e.g.*, diminish the potential use of futures markets for hedging) and may add to the adverse consequences resulting from the potential misalignment of prices.[36] In an effort to avoid the adverse consequences of locked limit market situations, exchanges have adopted other rules which do not appear to serve any inherent economic or financial purpose other than to mitigate the effects of price limits. Many exchanges have rules which allow traders to effect transactions in months that are locked limit by executing spread transactions.[37] This practice, however, artificially inflates the apparent volume of futures trading, requires the trader to incur additional transaction costs and leaves the trader exposed to changes in spread relationships which represent more risk than if he were to liquidate the position in the locked month through a single outright transaction.

For example, on September 8, 1979, the Chicago Board of Trade adopted a temporary emergency rule which provides that when either or both contract months involved in a spread transaction are trading at the limit price, one contract month or leg of the spread may be priced within the daily permissible range (the range of trading permitted by applicable price limits), with the other leg priced within the actual price range (the range of actual transaction prices occurring in a particular contract month on that day).[38] By permitting one leg to be priced within the permissible range, an economically realistic price differential could be achieved between a freely trading month and a month subject to price limits, thereby facilitating the liquidation of a position in a month subject to limits.[39]

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speculative excesses and maintain orderly markets, the presence of price limits directly curtails the free movement of futures prices. "The current price fluctuation limits make it difficult for the commercial paper contract to reflect accurately the price movements in the cash market * * * Additionally, the narrow limits do not allow [traders] sufficient flexibility for arbitrage trading between these contracts and (contracts of) other financial instruments. This causes the arbitrage relationship to not reflect the true market [price] differences." Letter from Thomas R. Donovan, Vice President and Secretary, Chicago Board of Trade to Jane K. Stuckey, Executive Secretariat of the Commission dated October 17, 1979.

[31] Letter from the Chicago Board of Trade to the Commission dated October 29, 1979.

[32] The price limits were increased from $.20 per ounce to $.40 per ounce. As a partial explanation for its emergency action of September 4, 1979, Comex noted that the $.20 daily price limit had been established 5½ years earlier at a time when silver was trading for 60% of its then-current price of $10.61 per ounce.

[33] Further, on November 27, 1979, the Commission granted approval to the Comex to increase, on a permanent basis, the daily price limit for silver from forty cents to fifty cents per ounce. These changes in the price limits were designed to permit silver to trade within daily price limits which more realistically reflected supply and demand forces in silver.

On September 5, 1979, the Board of Governors of the Chicago Board of Trade, using its emergency powers, amended its daily maximum price fluctuation limits in silver. In support of this amendment, the CBT noted that the September and October contracts had reached their price limits on at least one-third of the days between August 1 and September 5, 1979. On October 5, 1979, the Commission approved, pursuant to section 5a(12) of the Act, permanent rules proposed by the CBT setting forth new price limits in silver. The Exchange supported its proposal for these price limits by stating the following: Since September 1979, silver prices have become even more volatile and it is becoming increasingly more important to have appropriate, increased trading limits in order that the silver market may accurately reflect the cash market.

Letter from Thomas R. Donovan, Vice President and Secretary, Chicago Board of Trade to Jane K. Stuckey, Executive Secretariat of the Commission dated September 26, 1979.

[34] As amended, Comex rules 5 and 6 provide that, if any day on which either the 150% or the 200% expanded price limit is in effect is not a limit day, the same expanded price limit shall remain in effect for the following business day. If, on the following business day, one or more contract months again do not close at the limit, the daily price limit will revert to either 150% of the normal, or the normal price limit, depending on the level of expanded price limits in effect at the time.

[35] Most commodities traded in London, *e.g.* cocoa, coffee, sugar, and the metals, either have no limits or temporarily close for trading when the limits are reached, and then reopen at the same session without limits. These trading pauses allow all orders to be matched and permit the dissemination of price information. For this reason, U.S. traders who are locked in the domestic markets may be encouraged by price limits to establish an opposite position in the same commodity on a foreign market.

[36] Regarding locked in market situations, Messrs. Jiler and Scheu, members of the Commission's Advisory Committee, commented as follows: A step in the right direction would be to have one contract (prior to first notice day) open at all times—hence market participants would never have to worry about being 'locked in.' One could always get out through the 'open' contract. Margin requirements could be set appropriately higher in the 'open' contract to satisfy clearinghouse objections, while reduced margins could be kept in those months still subject to 'limit' moves. The 'open' contract, itself, could well act as a stabilizing influence on overly-excited markets for pyschological reasons. Moreover, any resultant increased liquidity would act to further stabilize price movements.

Mr. Scheu especially advocated consideration of the London approach, referred to in the preceeding footnote. Advisory Committee Report, *supra* at 45.

[37] A spread or straddle is defined herein as the simultaneous sale of one futures delivery month against the purchase of another futures delivery month of the same commodity. In a locked limit market situation one can liquidate his position by estabishing an opposite position in a deferred month which is not trading at the limit and executing a spread transaction. For example, if a trader has a long position in November soybeans, he can establish a short position in January soybeans and simultaneously execute a liquidating spread in those months.

[38] The CBT later proposed permanent adoption of this temporary emergency rule and on February 20, 1980, the Commission approved that rule change.

[39] In recent months, increased market volatility has prompted exchanges to submit similar amendments to spread pricing rules, pursuant to

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Consideration of Alternative Price Limit Measures; Request for Comments

In view of the concerns discussed above, the frequent volatility of futures prices and the absence of price limits in the cash and forward markets (as well as the absence of price limits in many competing foreign futures markets), the Commission invites interested persons to analyze existing exchange rules which impose price limits and to consider whether such rules, and the price limit procedures which they implement, should be modified or whether alternative procedures might better achieve the objectives of the Act. The Commission would welcome comment on the benefits and deficiencies of the current exchange rules, as well as a discussion of specific alternative measures which commentators believe might address particular shortcomings in the current rules and procedures. In this regard, commentators should address whether changes in the current price limit rules and practices of the exchanges might require exchanges, clearinghouses, or FCM's to modify their existing margin policies, or any other rules, and what form such modifications might take in order to better achieve the objectives of the Act.

Commentators who believe that the various existing price limit rules and procedures which the exchanges have adopted represent an acceptable regulatory program, should address: (1) Whether a more uniform approach to price limits currently set by exchanges would reduce regulatory burdens by alleviating possible confusion among customers and exchange member firms; (2) whether possible regulatory or other problems might arise from a Commission determination to pursue one or more of the other alternatives discussed in this Notice, including the elimination of price limits after one or more days of limit moves in a contract month; and (3) whether specific modifications to existing exchange rules and procedures might better achieve the objectives of the Act.

In this latter regard, the Commission notes that a number of futures contracts are traded under a system of variable limits which establish, in advance, the extent of gradually increasing limits during periods of increased volatility.[40]

For example, the price limit rules applicable to gold, copper, U.S. Treasury bills and U.S. silver coins traded on the Chicago Mercantile Exchange and all commodities, except potatoes, traded on the New York Mercantile Exchange provide that when one delivery month in a particular commodity moves up or down the regular limit in the same direction for two consecutive days, on the third day the limit is expanded to 150 percent of the regular limit for all contract months for the commodity. On the third day of trading with the expanded limit, if a contract month continues a limit move in the same direction, the fourth day's limit is increased to 200 percent of the regular limit. The limit remains at 200 percent, provided limit moves in the same direction occur, until one month does not move the limit. Then on the following day (regarding of whether the limit was 150 percent or 200 percent), the limit reverts to the original limit.[41]

Commentators should address whether such a system for variable price limits would be appropriate for all futures contracts designated by the Commission and whether it might be appropriate, within the purposes of the Act, to provide a more accelerated schedule of expanding limits under a variable price limits scheme. For example, commentators may wish to address the feasibility of a variable price limit procedure which automatically doubles the applicable price limits on a day following a trading day where the price closed at the current limits.[42]

Commentators who believe that existing price limit rules and procedures do not adequately permit the market to reflect the fair market value of a commodity or are otherwise deficient should address whether the Commission should consider the disapproval of existing price limit rules and the prohibition of the imposition of subsequent daily price limits or requiring contract markets to follow the "London" approach. These commentators should address what regulatory objectives, if any, would be achieved by providing for such free market trading. They should also address whether price limits, in one form or another, are necessary and valid and, if so, how such benefits might be incorporated in a market which trades without price limits.

Since the prevention of short term overreactions to market news appears to be a primary basis for the existence of price limits, commentators are also requested to address whether such concerns might be accommodated by the suspension of price limits on any day following one or more trading days where a limit move occurred. Such a temporary limit system might be patterned after the rules governing currency futures contracts on the Chicago Mercantile Exchange, which provide for the removal of limits on the fifth day, whenever after four successive days the settlement price reaches the daily price limit in the same direction. Commentators should consider, however, whether a shorter period of time (one, two or three consecutive days of limit moves) would be a more appropriate "trigger" period for the suspension of price limits. Under such a plan, any futures contract which trades at a price limit adopted by an exchange for the prescribed time period would be free to trade without a price limit for at least one day thereafter before the normal exchange price limits were reimposed.

In view of the foregoing, the Commission hereby gives advance notice of its intent to consider engaging in rulemaking which may affect contract market rules governing the imposition and maintenance of price limits.[43]

Issued in Washington, D.C., on August 13, 1980.

Jane K. Stuckey,

*Secretary of the Commission.*

[FR Doc. 80-25305 Filed 8-19-80; 8:45 am]

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section 5a(12) of the Act, to facilitate spread trading in locked in market situations. *See* CME rule 542, approved by the Commission on June 24, 1980; New York Mercantile Exchange rules 90.13, 100.13 and 110.13, approved by the Commission on April 17, 1980 and MidAmerica Commodity Exchange rule 407C, approved by the Commission on February 26, 1980.

[40] The New York Mercantile Exchange and the CME have devised a system of variable price limits for commodities traded on their exchanges that differs somewhat from the variable limit system used on the CBT which was discussed above. Variable price limits apply to all futures contracts traded on the CBT and the New York Mercantile Exchange; coffee and sugar futures contracts traded on the New York Coffee, Sugar & Cocoa Exchange; cotton futures contracts traded on the New York Cotton Exchange; and all futures contracts (including U.S. Treasury bills, silver coins, copper and gold) traded on the CME.

[41] CME rules 3407, 3308, 3208 and 3108. New York Mercantile Exchange rules 70.06, 80.06, 90.06, 100.06, 110.06, 120.06, 130.06 and 150.07.

[42] For example, if on Monday a particular commodity advanced to the applicable price limit, the trading range on Tuesday would be 200% of the range applicable on Monday. If the price advanced to the expanded limit on Tuesday, the trading range on Wednesday would be doubled again, to 400% of the normal trading range.

[43] Sections 8a(5) and 8a(7) of the Act provide the Commission with authority to engage in rulemaking of general or specific applicability.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

# Customs Relations With Canada and Mexico; Proposed Amendments To Customs Regulations, Relating to United States and Canada In-Transit Truck Procedures

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** Trucks proceeding between points in the United States may cross the United States-Canada border, use Canadian highways, and then reenter the United States and proceed to their destination. This document proposes to amend the Customs Regulations to require the driver of a truck carrying merchandise between points in the United States, via Canada, to present a manifest (an itemized listing of the shipment) for validation by U.S. Customs at the United States port of departure. The driver would then be required to present the validated manifest to Canadian Customs at the Canadian ports of entry and exit and to U.S. Customs at the port of reentry into the United States. At present, the manifest is required to be presented at the United States port of reentry but not at the port of departure. This change would enable U.S. Customs at the port of departure to verify the contents of shipments covered by the manifest so as to ensure the payment of duties and taxes and compliance with applicable laws and regulations when the truck reenters the United States. Conforming amendments also are proposed because of similar changes in Canadian Customs procedures concerning truck shipments proceeding between points in Canada via the United States. The amendments are considered to be significant.

**DATES:** Comments must be received on or before October 20, 1980.

**ADDRESS:** Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2335, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Legal Aspects: Benjamin H. Mahoney, Entry Procedures and Penalties Division (202-566-5778); Operational Aspects: J. Bradley Lund, Inspection and Control Division, (202-566-5354), U.S. Customs Service, 1301 Constitutional Avenue, NW., Washington, D.C. 20229.

**SUPPLEMENTARY INFORMATION:**

## Background

Because of the geographic, highway, and climatic conditions along the United States-Canadian border, use of a Canadian route to transport merchandise by truck between points in the United States is a common occurrence. In these circumstances, the merchandise merely is being transported through Canada; there is no intent to export it from the United States. To process this type of movement, § 123.41, Customs Regulations (19 CFR 123.41), provides a simplified Customs procedure which allows for the reentry of merchandise into the United States without filing a Customs entry and paying duty, while at the same time protecting the revenue of the United States.

Under present procedures, a manifest on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½, an itemized list of merchandise being transported, is presented to Canadian Customs officers at the Canadian port of arrival by the driver of a truck carrying shipments of merchandise between points in the United States through Canada. Upon compliance with Canadian Customs regulations, the shipment is sealed, unless sealing is waived by Canadian Customs, and the driver is allowed to proceed through Canada. At the Canadian port of exit, the driver presents the manifest to Canadian Customs officers to verify that the seals are intact or, if sealing has been waived, that there are no irregularities. This ensures that no changes have been made in the shipment. After verification and certification of the manifest, the driver is allowed to proceed to the United States port of reentry where he presents the certified copy of the manifest to U.S. Customs officers. If they are satisfied that the shipment contains only merchandise which moved on the truck from the United States through Canada, the truck is allowed to reenter the United States without filing a Customs entry and paying duty.

This procedure, which was implemented with the cooperation of Canadian Customs and is similar to the procedure they use for truck shipments proceeding between points in Canada via the United States, was designed to protect the revenue of both countries while not delaying unnecessarily the transportation of merchandise.

However, it has come to the attention of U.S. Customs that, in certain circumstances, the revenue may not be protected because foreign merchandise may be imported into the United States without duty being paid. For example, under § 123.31, Customs Regulations (19 CFR 123.31), merchandise may be transported in transit across the United States between Canada and Mexico under the procedures set forth in Part 18, Customs Regulatins (19 CFR Part 18), for merchandise entered for transportation and exportation. Using these procedures, a shipment of foreign merchandise from Mexico destined for Canada may be transported under bond on a Transportation and Exportation Entry (T & E) by truck through the United States and exported to Canada. Because the merchandise is not entering the commerce of the United States, the truck driver need not file a formal U.S. Customs entry and pay duty. However, it has been found that after the T & E is closed by U.S. Customs officers at the United States port of exit and the bond cancelled, some truck drivers then have presented a manifest on Customs Form 7512-B Canada 8½ to Canadian Customs at a Canadian port of arrival. By following the procedures under § 123.41, foreign merchandise transported through the United States from Mexico to Canada is shown on the manifest as merely being transported by truck from point to point in the United States through Canada and then is reentered into the United States without an entry having been filed and duty paid. In addition to creating a situation that allows the United States to be deprived of the revenue due on this foreign merchandise, the present wording of § 123.41 may allow persons to bring narcotics and other contraband into the United States.

Accordingly, on December 9, 1976, a notice was published in the Federal Register (41 FR 53810) of a proposal to amend § 123.41(a) to require the driver of a truck carrying shipments of merchandise between points in the United States through Canada to present a manifest on Customs Form 7512-B Canada 8½ to U.S. Customs officers at the United States port of departure. This would allow U.S. Customs officers there to validate the manifest for shipments of merchandise transiting Canada by truck from point to point in the United States. A manifest on Customs Form 7512-B Canada 8½ would not be presented for validation if the merchandise covered by the manifest arrives at the United States port of departure for export. Without a validated manifest, Canadian Customs officers at the Canadian port of entry would not permit the truck shipment to transit Canada from point to point to return to the United States. This procedure would ensure that foreign merchandise is not reentered into the

United States without the filing of an entry and payment of duties.

Interested parties were given until January 10, 1977, to submit data, views or arguments regarding this proposal. A discussion of the substantive comments received in response to that notice follows.

Discussion of Comments

1. While stating that it agreed with the purpose of the proposed amendment, a United State-Canada bonded carrier noted that shipments often are tendered for movement on short notice after regular office hours. It stated that if the proposal were adopted, manifests would have to be prepared in its terminal office and sent by courier to the place where the truck would be waiting at the United States-Canada border with the shipment. It stated that this delay would cause an additional expense that would have to be absorbed by the carrier.

As an alternative, this commenter suggested that U.S. Customs at the United States port of departure could validate the driver's bill of lading rather than the Customs Form 7512–B Canada 8½. It further suggested that the bill of lading be sealed in a special envelope to be opened and reviewed by U.S. Customs at the port of reentry into the United States. It suggested that if a truck were not inspected by U.S. Customs at the port of departure, it could be refused subsequent reentry to the United States.

Customs believes that this carrier's logistical problem of getting the Customs Form 7512–B Canada 8½ from its terminal to the driver could be solved with appropriate planning. As to its suggested alternative, additional problems could be creatd by requiring a bill of lading to be presented to Customs for validation because it is not an official Customs document.

It is also noted that Canadian Customs is planning to adopt similar procedural changes for truck shipments proceeding between points in Canada via the United States. Customs does not believe a change as suggested would be beneficial to continued cooperation of United States and Canadian Customs in this matter.

2. Another commenter suggested that the proposed requirement—that trucks transiting Canada while proceeding between points in the United States stop at the United States port of departure—be extended to include all trucks departing from the United States. It claimed that this extension would assist in preventing truck drivers from neglecting to file with U.S. Customs documentation relating to the exportation of articles temporarily imported into the United States under bond. The commenter believes that this change would eliminate claims for liquidated damages assessed against importers for failure to cancel temporary importation bond entries when the claim is assessed merely for the failure of the driver to file the necessary documentation for cancellation of the bond at the port of departure.

Customs believes that to require all trucks to stop at United States ports of departure would create traffic problems at the Canadian border that would not be justified by the limited benefits to be derived.

3. Another carrier expressed concern that because the proposed § 123.41(a) refers to "sealable truckload" shipments, it could be inferred that open exposed flatbed or low side flatbed trucks could not utilize the procedures in this section of the regulations. However, Subpart E of Part 123, Customs Regulations, is applicable to truck shipments transiting Canada and truck shipments transiting the United States regardless of whether the truck is sealable or non-sealable. Accordingly, all trucks with merchandise transiting Canada from point-to-point in the United States and all trucks with merchandise transiting the United States from point-to-point in Canada may utilize this procedure. Under the proposal, the driver of each truck transiting Canada, whether sealable or non-sealable, would be required to present the manifest to U.S. Customs at the United States port of departure for review and validation prior to entry into Canada. The language in the initial proposal has been revised to clarify this point.

Other Changes

After consideration of all the comments and further review of this matter with representatives of Canadian Customs, it has been determined that adoption of the proposed amendments would be in the best interests of protecting the revenue and in preventing the unlawful importation of narcotics and other contraband. However, adoption of the amendments would necessitate certain changes in the procedures followed by U.S. Customs officers concerning presentation of Customs Form 7512–B Canada 8½ which were not included in the proposal to amend § 123.41. Furthermore, it also would be necessary to make conforming amendments to § 123.42, Customs Regulations (19 CFR 123.42), concerning the procedures used by Canadian Customs for truck shipments transiting the United States while proceeding between points in Canada.

Canadian Customs also is concerned with its present in-transit procedures and the potential loss of its revenue. Therefore, in cooperation with U.S. Customs, it plans to change its procedures to require the presentation of a United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½, for validation by Canadian Customs at the Canadian port of departure for truck shipments transiting the United States from point-to-point in Canada. The change in Canadian Customs procedures would be effective on the same date as the changes in U.S. Customs procedures. Accordingly, it would be necessary to amend § 123.42 to reflect the changes in Canadian Customs requirements and procedures.

In addition to the above changes, a number of minor editorial and stylistic changes would be needed to clarify the regulations.

In view of the foregoing, a new notice is being issued to allow any interested party an opportunity to comment on the revised proposed amendments.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Comments

Before adopting this proposal, consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.3(b), Customs regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of EO 12044

This document is not subject to the Treasury Department directive implementing Executive Order 12044, "Improving Government Regulations", because the proposal was in process before May 22, 1978, the effective date of the directive.

Authority

These amendment are proposed under the authority of R.S. 251, as amended, and sections 553, 554, 624, 46 Stat. 742, as amended, 743, 759 (19 U.S.C. 66, 1553, 1554, 1624).

Proposed Amendments

It is proposed to amend Part 123, Customs Regulations (19 CFR Part 123), in the following manner:

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

### Subpart E—United States and Canada In-Transit Truck Procedures

1. It is proposed to amend § 123.41 to read as follows:

**§ 123.41 Truck shipments transiting Canada.**

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the United States will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver shall present the manifest in four copies to U.S. Customs at the United States port of departure for review and validation.

(b) *Procedure at United States port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated United States–Canada Transit Manifest, Customs Form 7512–B Canada 8–½, in four copies to the Canadian Customs officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the United States port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no irregularities. After verification and certification of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the United States port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to the United States.

(d) *Procedure at United States port of reentry.* The driver of a truck reentering the United States after transiting Canada shall present a certified copy of the United States-Canada Transit Manifest, Customs Form 7512–B Canada 8–½, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the United States through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada.

2. It is proposed to amend § 123.42 to read as follows:

**§ 123.42 Truck shipments transiting the United States.**

(a) *Manifest required.* Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) *Procedure at United States port of arrival—* (1) *Presentation of manifest.* The driver shall present a validated United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest with the related Customs Form 7512–C (duplicate) to the driver for presentation to U.S. Customs at the United States port of exit.

(2) *Sealing or waiver of sealing.* Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with § 18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) *Procedure at United States port of exit.* The driver shall present the three validated copies of the manifest and the related Customs Form 7512–C (duplicate) to the U.S. Customs officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of reentry.* The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512–B Canada 8½, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port

of exit, the driver will be allowed to return to that port to have it certified.

(f) *Proof of exportation from United States.* The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S.

William T. Archey,

*Acting Commissioner of Customs.*

Approved: July 29, 1980.

Richard J. Davis,

*Assistant Secretary of the Treasury.*

[FR Doc. 80-25306 Filed 8-19-80; 8:45 am]

BILLING CODE 4810-22-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Ch. VII

### Reclamation and Enforcement; Public Disclosure of Comments Received From Federal Agencies on the Utah State Permanent Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

**ACTION:** Announcement of public disclosure of comments on the Utah program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent State regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies and is today announcing their public disclosure with regard to the Utah State permanent program.

**ADDRESS:** Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, Reclamation and Enforcement, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202. Telephone (303) 837-5421.

Office of Surface Mining, Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Division of Oil, Gas and Mining, 1588 West North Temple, Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Donald Crane, Regional Director, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202; or

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-4225.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is evaluating the Utah permanent regulatory program submitted by Utah for his review on March 3, 1980. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the Utah program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies were invited to comment on the Utah program:

Department of Agriculture
- USDA State Land Use Committee
- Soil Conservation Service
- Forest Service
- Farmers Home Administration
- Scientific and Educational Administration—Agricultural Research
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation

Council of Environment Quality

Department of Labor
- Mine Safety and Health Administration

U.S. Environmental Protection Agency

Water Resources Council

Department of Energy

Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Water and Power Resources Service (formerly Bureau of Reclamation)
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

Upper Colorado River Basin Commission

U.S. Army Corps of Engineers.

Of those agencies invited to comment, OSM received comments from the following offices:

Department of Agriculture
- Forest Service

U.S. Environmental Protection Agency

Department of Energy

Department of the Interior
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Fish and Wildlife Service
- U.S. Geological Survey

Advisory Council on Historic Preservation

U.S. Army Corps of Engineers.

These comments are available for review and copying during business hours at the locations listed above under "Addresses".

Dated: August 15, 1980.

Carl C. Close,

*Assistant Director, State and Federal Programs.*

[FR Doc. 80-25302 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-05-M

### 30 CFR Ch. VII

### Reclamation and Enforcement; Public Disclosure of Comments Received From Federal Agencies on the North Dakota State Permanent Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

**ACTION:** Announcement of public disclosure of comments on the North Dakota program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent State regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies and is today announcing their public disclosure with regard to the North Dakota State Permanent program.

**ADDRESSES:** Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, Reclamation and Enforcement, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202. Telephone: (303) 837-5421.

Office of Surface Mining, Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

North Dakota Public Service Commission, Capitol Building, Bismarck, North Dakota 58505.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Donald Crane, Regional Director, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202; or

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surfact Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4225.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is evaluating the North Dakota program submitted by North Dakota on February 29, 1980. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the North Dakota program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following federal agencies were invited to comment on the North Dakota program:

Department of Agriculture
- Soil Conservation service
- Forest Service
- Farmers Home Administration
- Scientific and Educational Administration Agricultural Research
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation
Council of Environmental Quality
Department of Labor
- Mine Safety and Health Administration

U.S. Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Water and Power Resources Service (formerly Bureau of Reclamation)
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

Custer National Forest
Missouri River Basin Commission
U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received comments from the following offices:

Department of Agriculture
- Soil Conservation Service

Department of Labor
U.S. Environmental Protection Agency
Department of Energy
Department of the Interior
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

U.S. Army Corps of Engineers

These comments are available for review and copying during business hours at the locations listed above under "Addresses".

Dated: August 15, 1980.

Carl C. Close,

*Assistant Director, Office of Surface Mining.*

[FR Doc. 25353 Filed 8–19–80; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Ch. VII

## Public Disclosure of Comments Received From Federal Agencies on the Illinois State Permanent Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

**ACTION:** Announcement of public disclosure of comments on the Illinois program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies and is today announcing their public disclosure with regard to the Illinois State permanent program.

**ADDRESSES:** Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region III, 5th Floor, 46 E. Ohio Street, Indianapolis, Indiana 46204.

Office of Surface Mining, Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Department of Mines & Minerals, Division of Land Reclamation, 227 South 7th St., Suite 204, Springfield, Illinois 62706.

**FOR FURTHER INFORMATION CONTACT:**

J. M. Furman, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 46 E. Ohio Street, Room 527, Indianapolis, Indiana 46204. Telephone (317) 269–2629; or

Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343–4225.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is evaluating the Illinois permanent regulatory program submitted by Illinois for his review on March 3, 1980. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Illinois program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies where invited to comment on the Illinois program:

Department of Agriculture
- USDA State Land Use Committee
- Soil Conservation Service
- Forest Service
- Farmers Home Administration
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation
Council on Environmental Quality
Department of Labor
- Mine Safety and Health Administration

U.S. Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Water and Power Resources Service (formerly Bureau of Reclamation)
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

Ohio River Basin Commission
U.S. Army Corp of Engineers

Of those agencies invited to comment, OSM received comments from the following offices:

Department of Agriculture
- Agricultural Stabilization & Conservation Service
- Soil Conservation Service
- Forest Service

Department of Labor
U.S. Environmental Protection Agency
Council on Environmental Quality
Department of Energy
U.S. Army Corps of Engineers
Department of the Interior
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Fish and Wildlife Service

National Park Service
U.S. Geological Survey

These comments are available for review and copying during business hours, at the locations listed above under "Addresses".

Dated: August 14, 1980.

Edgar A. Imhoff,

*Regional Director, Office of Surface Mining.*

[FR Doc. 80-25354 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-05-M

## 30 CFR Ch. VII.

## Reclamation and Enforcement; Public Disclosure of Comments Received From Federal Agencies on the Colorado State Permanent Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior..

**ACTION:** Announcement of public disclosure of comments on the Colorado program from the Environmental Protection Agency (EPA), The Department of Agriculture (USDA) and Other Federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent State regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies and is today announcing their public disclosure with regard to the Colorado State permanent program.

**ADDRESSES:** Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, Reclamation and Enforcement, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202. Telephone (303) 837–5421.

Office of Surface Mining, Department of the Interior, Room 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Donald Crane, Regional Director, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202. Telephone: (303) 837–5421; or

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–4225.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is evaluating the Colorado permanent regulatory program submitted by Colorado for his review on February 29, 1980. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the Colorado program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies were invited to comment on the New Mexico program:

Department of Agriculture
- Soil Conservation Service
- Farmers Home Administration
- Forest Service
- Agriculture Stabilization and Conservation Service
- Agricultural Experiment Station

Advisory Council on Historic Preservation

Department of Labor
- Mine Safety and Health Administration

U.S. Environmental Protection Agency

Water Resources Council

Department of Energy

Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Bureau of Reclamation
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

Council on Environmental Quality

U.S. Army Corps of Engineers

Missouri River Basin Commission

Of those agencies invited to comment, OSM received comments from the following offices:

Department of the Interior
- Heritage Conservation and Recreation Service
- Fish and Wildlife Service
- Bureau of Mines
- U.S. Geological Survey

Department of Labor
- Mine Safety and Health Administration

Department of Energy

U.S. Environmental Protection Agency

U.S. Army Corps of Engineers

These comments are available for review and copying during business hours, at the locations listed above under "Addresses".

Dated: August 15, 1980.

Carl C. Close,

*Assistant Director, Office of Surface Mining.*

[FR Doc. 80-25355 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-05-M

## 30 CFR Ch. VII

## Reclamation and Enforcement; Public Disclosure of Comments Received From Federal Agencies on the New Mexico State Permanent Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

**ACTION:** Announcement of public disclosure of comments on the New Mexico program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

**SUMMARY:** Before the Secretary of the Interior may approve permanent State regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Secretary has solicited comments of the agencies and is today announcing their public disclosure with regard to the New Mexico State permanent program.

**ADDRESSES:** Copies of the comments received are available for public review during business hours at:

Energy and Minerals Department, Division of Mining and Minerals, First Northern Plaza East, Room 200, Santa Fe, New Mexico 87501, Telephone (505) 827–5451.

Office of Surface Mining, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202, Telephone: (303) 837–5421.

Office of Surface Mining, Room 135, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Donald Crane, Regional Director, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, Telephone: (303) 837–5421; or

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240, Telephone: (202) 343–4225.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is evaluating the New Mexico permanent regulatory program submitted by New Mexico for his review on February 28, 1980. In

accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the New Mexico program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies were invited to comment on the New Mexico program:

Department of Agriculture
Soil Conservation Service
Agricultural Stabilization and Conservation Service
Forest Service
Science and Education Administration
Farmers Home Administration
Agricultural Experiment Station
Advisory Council on Historic Preservation
Department of Labor
Mine Safety and Health Administration
U.S. Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Heritage Conservation and Recreation Service
Bureau of Reclamation
National Park Service
Fish and Wildlife Service
U.S. Geological Survey
U.S. Army Corps of Engineers
Upper Colorado River Basin Commission
Council on Environmental Quality

Of those agencies invited to comment, OSM received comments from the following offices:

Department of the Interior
Fish and Wildlife Service
U.S. Geological Survey
Bureau of Land Management
Bureau of Mines
Heritage Conservation and Recreation Service
National Park Service
U.S. Environmental Protection Agency
Department of Agriculture
Soil Conservation Service
Forest Service
Advisory Council on Historic Preservation
Department of Energy
U.S. Army Corps of Engineers
Department of Labor
Mine Safety and Health Administration

These comments are available for review and copying during business hours at the locations listed above under "Addresses".

Dated: August 15, 1980.

Carl C. Close,

*Assistant Director, Office of Surface Mining.*

[FR Doc. 80-25356 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

[FRL 1578-8]

## Proposed Revisions of the Delaware State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The State of Delaware has submitted amendments to its air pollution control regulations and has requested that they be reviewed and processed as revisions of the Delaware State Implementation Plan.The amendments consist of changes to Regulations I (Definitions), II (Registration and Permits), III (Ambient Air Quality Standards), IV (Particulate Emissions from Fuel Burning Equipment), VIII (Sulfur Dioxide Emissions from Fuel Burning Equipment), XII (Nitrogen Oxides Emissions from Fuel Burning Equipment—New Castle County), XIV (Visible Emissions), XV (Air Pollution Alert and Emergency Plan), and XVII (Source Monitoring, Record Keeping, and Reporting). The State has also submitted a request for variance which would allow the Getty Refining and Marketing Company's catalytic cracking operations to emit particulates in excess of the limitations established in Regulations V and XIV until September, 1980, after which time the unit would be brought into compliance.

**DATE:** The public is invited to submit comments on these SIP revisions by September 19, 1980.

**ADDRESSES:** All comments should be addressed to Glenn Hanson, Chief, WV, PA, and DE Section, Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, ATTN: AH009/010DE

Copies of the materials submitted by the State of Delaware are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan.

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold A. Frankford (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, Telephone (215) 597-8392.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 12, 1980, the State of Delaware submitted to the Regional Administrator, EPA Region III, amendments to the State of Delaware Regulations Governing the Control of Air Pollution and requested that they be reviewed and processed as revisions of the Delaware State Implementation Plan (SIP). Delaware submitted proof that a public hearing on these amendments was held on December 11 and 12, 1979, in accordance with the requirements of 40 CFR 51.4.

The amendments submitted by Delaware consist of changes to Delaware's Regulations I, II, III, IV, VII, XII, XIV, XV, and XVII, and of a variance allowing the Getty Refining and Marketing Company's catalytic cracking operations to emit particulates in excess of the limitations of Regulations V and XIV until September, 1980, after which time the unit would be brought into compliance.

### II. Amendments to Delaware Regulations

Delaware proposes to revise Regulations I, II, III, IV, VIII, XII, XIV, XV, and XVII as follows:

*A. Regulation I*

Delaware has revised the definitions in Regulation I as described below. New wording is underlined, deleted wording is enclosed by brackets.

1. Alteration: Delaware has deleted this definition and is using the definition of "Modification" as a substitute.

2. Construction, Installation, (or) Alteration *or Modification Permit:* Delaware has added "*or Modification*" to the list of types of permits defined.

The text of the definition remains the same.

3. Fuel Burning Equipment: Delaware has changed this definition to "*Each unit, or any combination of units discharging* to a common *stack* used for the burning of fuel or other combustible material for the primary purpose of utilizing the thermal energy released."

4. Modification: Delaware has amended the fourth sentence of this definition as follows: Conversion to coal required for energy consideration, as specified in (Section 114(d)(5)) *Section 113(d)(5)* of the Clean Air Act, shall not be considered a modification.

5. Sulfur Recovery Operation: Delaware has changed this definition to read: Any operation designed for the recovery of elemental sulfur, *including any upstream part of the operation designed to separate hydrocarbon sulfide from refinery gasses or water.*

*B. Regulation II—Registration and Permits*

Delaware has modified Regulation II in three ways. First, Delaware has amended Section 4.2 of the Regulation so that gasoline station storage tanks in New Castle County having a capacity of 2,000 gallons or more would no longer be exempt from Regulation II's requirements. Second, Delaware has modified Section 6 so that only an operating permit can be extended. Third, Delaware has modified Section 6 to exempt those holding open burning permits from the need to submit written requests for extensions.

*C. Regulation III—Ambient Air Quality Standards*

Delaware has made three changes in this regulation. First, Delaware has adopted EPA's recently promulgated ambient air quality standard for lead. Second, Delaware has amended its air quality standards for suspended particulates, sulfur dioxide, carbon monoxide, hydrocarbons, and nitrogen dioxide to make them equivalent to EPA's standards. Third, Delaware has revised Section 1.6 by listing within it more recent sampling and analytical procedures for determining concentrations of contaminants in the air.

*D. Regulation IV—Particulate Emissions From Fuel Burning Equipment*

Delaware has submitted one minor change in Regulation IV. Delaware has modified Section 2.1, which reads "No person shall cause or allow the emission of particulate matter in excess of 0.3 pounds per million Btu heat input, maximum two hour average, from any unit of fuel burning equipment," by deleting the words "unit of."

*E. Regulation VIII—Sulfur Dioxide Emission From Fuel Burning Equipment*

Delaware has amended Regulation VIII by including in Section 2 a specification of the sampling and analysis techniques that must be used to determine the sulfur content of oil.

*F. Regulation XII—Nitrogen Oxide Emissions*

Delaware has requested that Regulation XII be deleted from the SIP.

*G. Regulation XIV*

Delaware has amended Regulation XIV by adding to it two additional sections called Sections 3 and 4. Section 3 allows Delaware to make case-by-case modifications of its opacity requirements. Delaware is able to establish more stringent opacity requirements for a source if it determines that the source when in compliance with an applicable mass emission rate has emissions with an opacity more restrictive than Delaware's usual requirements. In addition, Delaware is able to relax its standard opacity requirements whenever a source can demonstrate that it is in compliance with an applicable mass emission standard yet can not meet the standard opacity requirement. Section 4 makes it necessary for determinations of compliance with opacity standards to be made in accordance with Section 1.5(c) of Regulation XX.

*H. Regulation XV—Air Pollution Alert and Emergency Plan*

Delaware has redefined the air quality levels at which alert stages I, II, and emergency are declared. Delaware has defined alert causing 24 hour concentrations of TSP in ug/m$^3$ rather than in parts per million COHS. Also, Delaware has defined $SO_2$ in ug/m$^3$ rather than in parts per million in those cases where TSP and $SO_2$ levels must be multiplied to establish if an alert is required.

*I. Regulation XVII—Source Monitoring, Record Keeping and Reporting*

Delaware has added a new subsection 1.6 to this regulation. This subsection states that, "The reference methods used to determine compliance with the standards prescribed in Regulation No. IV; V; VII; 3.1; IX and XIV shall be those set forth in Section 1.5, Regulation XX or such other method approved by the Department."

**III. Variance Request for the Getty Refining and Marketing Company.**

In addition to requesting EPA approval of the regulatory changes described above, Delaware has requested that EPA approve a variance for the Getty Refining and Marketing Company's Delaware City refinery. The variance would allow the refinery's catalytic cracking unit to continue to operate despite mechanical problems which have caused its particulate emissions to increase above the levels permitted by Regulations V and XIV. The variance would be in-effect until Getty could correct the problems causing excess particulate emissions by making repairs during a routine shutdown scheduled for September, 1980. The variance would be terminated earlier if Getty is able to bring the cracking unit into compliance with Regulation V earlier than September 30, 1980.

Delaware's Department of Natural Resources and Environmental Control (the Department) has included a number of conditions in the variance. These conditions are:

1. The Company shall continue its efforts to determine and to resolve the exact cause of the excessive catalyst emission problem as expeditiously as practicable. The Company shall summarize the results of these efforts in a written report to the Department at three-month intervals.

2. The Company shall measure the quantity of particulate emissions from the cracking unit stack at intervals acceptable to the Department and shall report the results of such tests promptly to the Department. The cracking unit shall be considered in compliance with Section 5.1, Regulation No. V when so indicated by two consecutive stack tests.

3. The Company shall measure and record the opacity of emissions from the cracking unit on a continuous basis during the variance period and provide a summary of the results of such monitoring to the Department at three-month intervals.

4. The Company shall disseminate to the news media and otherwise make available to the public a report at three-month intervals of the results of opacity and mass emissions tests and such other information pertaining to the Company's progress in resolving the excess emissions problems.

Delaware has given three reasons for allowing Getty to wait until the scheduled shutdown date of the catalytic cracking unit before requiring its repair. First, immediate shutdown of the cracking unit would lead to large cuts in fuel production. This would

occur because immediate shutdown of the unit would not preclude the need for or alter the length of the scheduled shutdown in September, 1980. Second, Getty now has three major environmental projects under construction, a stack gas scrubber, a sour water stripper, and a waste water treatment plant. In order to repair the cracking unit immediately, manpower resources might have to be shifted from these projects, causing their completion to be delayed. Third, air quality modeling shows that the cracking unit should cause no violations of ambient air quality standards during the period of the variance. Thus, the health of the public should not be adversely affected by granting the variance.

## IV. EPA Actions

The Administrator is proposing to approve the amendments to Delaware's regulations and the variance described above. EPA invites the public to submit comments to the address given above on whether EPA should proceed to approve these amendments and this variance as revisions of the Delaware SIP.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination of whether the amendments to Delaware's Air Pollution Control regulations, as well as the variance for Getty's Delaware City refinery, meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(42 U.S.C. 7401–642)

Dated: July 24, 1980.

Alvin R. Morris,

*Acting Regional Administrator.*

[FR Doc. 80-25278 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

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## 40 CFR PART 52

[FRL 1574-2]

## Interstate Pollution Abatement; Proceedings Under Section 126 of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of the closing of the record of proceedings under section 126 of the Clean Air Act.

**SUMMARY:** At Jefferson County's request, EPA is extending, until September 3, 1980, the comment period on their petition under section 126 of the Clear Air Act concerning the issue of whether the Public Service Indiana Gallagher Station emits sulfur dioxide in excess of the interstate pollution requirement of the Clean Air Act.

**DATE:** Deadline for submission of written materials and closing of the public hearing record is September 3, 1980.

**ADDRESSES:** Copies of the docket, #5A–80–9, for this section 126 petition are on file at:

The Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460.

Library, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

Essentially similar material is available for public inspection at:

Air Pollution Control District of Jefferson County, 914 E. Broadway, Louisville, Kentucky 40204.

Air Pollution Control Division, Indiana Board of Health, 1330 W. Michigan Street, Indianapolis, Indiana 46206.

Division of Air Pollution Control, Kentucky Department for Natural Resources and Environmental Protection, W. Frankfort Office Complex, U.S. 127 South Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert Miller, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Mr. Barry Gilbert, Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, (404) 881–3286.

**SUPPLEMENTARY INFORMATION:** In a notice dated March 17, 1980, 45 FR 17048, EPA announced that a hearing would be held on April 17, 1980 in Louisville, Kentucky to initiate proceedings under section 126 of the Clean Air Act on the issue of whether the Public Service Indiana Gallagher Stations emits sulfur dioxide in violation of section 110(a)(2)(E)(i) of the Clean Air Act. The hearing was held, at which time it was announced that the public comment period would be kept open until 30 days from the date of the hearing. On May 2, 1980 the EPA extended the public comment period to May 19, 1980 (45 FR 29313).

On May 15, 1980, the Air Pollution Control District of Jefferson County requested an extention of the comment period for the purpose of reviewing the transcript of the hearing. The EPA is, therefore, extending the public comment period until September 3, 1980.

Dated: August 8, 1980.

John McGuire,

*Regional Administrator.*

[FR Doc. 80-25301 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

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## 40 CFR Part 52

[FRL 1578-7]

## Approval and Promulgation of Implementation Plans; Proposed Revision to the New York State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal announces receipt of a request from the State of New York to revise its State Implementation Plan (SIP). If approved by the Environmental Protection Agency, this revision will have the effect of continuing a temporary relaxation in the sulfur content limitation applicable to fuel burning sources with a capacity less than 250 million BTU per hour located in parts of the Southern Tier East, Central New York and Champlain Valley (Northern) Air Quality Control Regions. These relaxations, called "special limitations," would allow these sources to continue the use of fuel oil with a maximum sulfur content of 2.8 percent, by weight, until December 31, 1982.

**DATES:** Comments must be received by October 20, 1980.

**ADDRESSES:** All comments should be addressed to: Charles S. Warren, Regional Administrator, US. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10278.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, 212–264–2517.

**SUPPLEMENTARY INFORMATION:** On April 30, 1980 the Environmental Protection Agency (EPA) received a proposed revision to the New York State Implementation Plan (SIP). This revision provides for the continuation of a State initiated fuel oil sulfur content relaxation ("special limitation") affecting certain fuel burning sources in certain areas of the State. The submittal requests that this "special limitation," which was previously approved by EPA (42 FR 56607, October 27, 1977) and which expired December 31, 1979, be renewed and extended through December 31, 1982.

"Special limitations" are authorized by Part 225.2 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and can allow individual sources or groups of sources to use a fuel of a different sulfur content than the prevailing regulation. The State's proposed extension of the "special limitation" would continue to relax (unless otherwise constrained by a Prevention of Significant Deterioration (PSD) permit) to a maximum of 2.8 percent sulfur, by weight, the sulfur-in-fuel-oil limitation applicable to sources which do not have a total heat input in excess of 250 million BTU per hour located in the following areas:

1. The Southern Tier East Air Quality Control Region (AQCR), with the exception of all sources in Broome County.
2. The Central New York AQCR, with the exception of the Oswego Facilities Trust Company in Oswego County and all sources in Onondaga County.
3. The Champlain Valley (Northern) AQCR, with the exception of all sources in the City of Glens Falls and sources with a total heat input greater than 100 million BTU per hour in the Town of Queensbury.

The State's SIP revision submittal consists of:

1. A technical support document evaluating the air quality impact of the special limitations.
2. Public hearing documents relating to the proposed rule changes.
3. Copies of letters sent to the States of New Jersey, Connecticut, Vermont, Pennsylvania and to local air pollution control agencies.

The State's SIP revision request was submitted in accordance with all EPA requirements under 40 CFR Part 51. These include the need for a public hearing, which was held by the State on November 27, 1979.

In order for EPA to be able to find the State's "special limitation" approvable as a revision to the New York SIP, it must be demonstrated that the use of 2.8 percent sulfur content fuel oil will not result in the contravention of any national ambient air quality standard or violate any applicable PSD increment.

It should be noted that the objective of the PSD program, as discussed in Part C, Sections, 160–169, of the Clean Air Act of 1977, is to protect areas with air quality cleaner than the national ambient air quality standards. The program is designed to insure that economic growth can occur in a manner consistent with the preservation of existing clean air resources. Pursuant to the PSD regulations promulgated on August 7, 1980 (45 FR 52676), the baseline date is defined as the date after August 7, 1977 on which the first complete application if filed with the appropriate reviewing authority by a source subject to the PSD regulations. Since there have not been any complete applications filed to date in the three AQCRs affected by today's proposal, the baseline date has not been set in the AQCRs. Therefore, these revisions to the New York SIP do not consume increment and do not need to be evaluated in terms of increment consumption.

EPA has reviewed the technical material submitted by New York State Department of Environmental Conservation and proposes to approve the renewal of the "special limitation" in the three AQCR's. EPA concurs with the State's determination that no national ambient air quality standard or PSD increment will be contravened.

Interested persons are invited to comment on any element of the subject revision and on whether or not the proposed New York SIP revision meets Clean Air Act requirements. Comments received by (60 days following publication) will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 908, New York, New York 10278.

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

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the proposed revision to the New York State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Section 110 (a)(2)(A)–(K) of the Clean Air Act and EPA regulations in 40 CFR Part 51.

(Sec. 110, 301 Clean Air Act, as amended (42 U.S.C. 7410, 7601))

Dated: July 21, 1980.

Charles S. Warren,
*Regional Administrator.*

[FR Doc. 80-25337 Filed 8-19-80; 8:45 am]
BILLING CODE 6560-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-5883]

### National Flood Insurance Program; Proposed Flood Elevation Determinations

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Canada and Hawaii call Toll Free Line (800 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a)).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

**Proposed Base (100-Year) Flood Elevations**

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| California | Moraga (Town), Contra Costa County. | Moraga Creek | 60 feet upstream from center of St. Andrews Drive | *487 |
| | | Ivy Drive Tributary | 180 feet upstream from center of Moraga Way | *520 |
| | | Larch Creek | 60 feet upstream from center of Larch Avenue | *484 |
| | | South Branch Moraga Creek | 170 feet upstream from center of Camino Pablo | *555 |
| | | Laguna Creek | 80 feet upstream of Country Club Drive | *483 |
| | | | Intersection of creek and Moraga Road | *605 |
| | | Corliss Drive Tributary | 150 feet upstream from center of Corliss Drive | *531 |
| | | St. Mary's Road Tributary | 50 feet upstream from center of Moraga Road | *509 |
| | | Las Trampas Creek | Intersection of creek and St. Mary's Road | *551 |
| | Maps available at City Hall, City Engineers Office, 350 Rheem Blvd., Post Office Box 188, Moraga, California. | | | |
| | Send comments to Honorable Michael Cory, 350 Rheem Blvd., Post Office Box 188, Moraga, California 94556. | | | |
| Delaware | Dagsboro, Town, Sussex County.. | Pepper Creek | Downstream Corporate Limits | *0 |
| | | | Upstream side of Main Street | *14 |
| | | | Upstream Corporate Limits | *15 |
| | | Fork No. 1 to Pepper Creek | Confluence with Pepper Creek | *0 |
| | | | Downstream side Piney Neck Road | *20 |
| | | | Downstream side Waples Street | *24 |
| | | | Downstream side of ConRail crossing | *28 |
| | | Fork No. 2 to Pepper Creek | Confluence with Pepper Creek | *10 |
| | | | Approximately 800 feet downstream of Main Street | *19 |
| | | | Upstream side of Main Street | *26 |
| | | | Downstream side of ConRail crossing | *27 |
| | | Fork No. 3 to Pepper Creek | Confluence with Pepper Creek | *14 |
| | | | Upstream side of Conrail crossing | *21 |
| | | | Upstream side of Swamp Road | *24 |
| | | | Approximately 800 feet upstream of Swamp Road | *24 |
| | Maps available at the Dagsboro Town Hall. | | | |
| | Send comments to Honorable Arthur Osper, Mayor of Dagsboro, P.O. Box 420, Dagsboro, Delaware 19939. | | | |
| Georgia | City of Buford, Gwinnett and Hall Counties. | Suwanee Creek | Just upstream of Sudderth Road | *995 |
| | | | Approximately 150 feet downstream of Maddox Road | *1,004 |
| | | | Approximately 300 feet downstream of Thomson Mill Road | *1,043 |
| | | Suwannee Creek Tributary 1 | Just downstream of U.S. Highway 23 | *1,000 |
| | | Suwanee Creek Tributary 2 | Just downstream of Georgia Highway 13 | *1,037 |
| | Maps available for inspection at Buford City Manager's Office, City Hall, 30 Garnett Street, Buford, Georgia. | | | |
| | Send comments to Mr. Kemlin, City Manager, Buford City Hall, 30 Garnett Street, Buford, Georgia 30518. | | | |
| Georgia | City of Rest Haven, Gwinnett County. | Suwanee Creek | Approximately 120 feet downstream of Bryant Road | *1,055 |
| | | | Just upstream of Bryant Road | *1,060 |
| | Maps available for inspection at Rest Haven City Hall, 841 Gainesville Highway, Buford, Georgia. | | | |
| | Send comments to Mayor Tullis or Mr. Lee Jones, Assistant Mayor, Rest Haven City Hall, 841 Gainesville Highway, Buford, Georgia 30518. | | | |
| Georgia | City of Suwanee, Gwinnett County. | Suwanee Creek | Just downstream of Burnette Road | *933 |
| | | | Just upstream of Martin Farm Road | *941 |
| | | | Approximately 325 feet upstream of State Highway 317 | *947 |
| | | Ivy Creek | Approximately 150 feet downstream of Old Suwanee Road | *955 |
| | Maps available for inspection at Suwanee City Hall, 323 Buford Highway, N.W., Suwanee, Georgia 30174. | | | |
| | Send comments to Mayor Terry or Ms. Amy Johnson, City Clerk, Suwanee City Hall, 323 Buford Highway, N.W., Suwanee, Georgia 30174. | | | |
| Illinois | Hoffman Estates (Village), Cook County. | Poplar Creek | 100 feet upstream from center of Golf Road | *773 |
| | | | 200 feet upstream from center of Higgins Road | *808 |
| | | East Branch of Poplar Creeek | 100 feet upstream from center of Barrington Road | *785 |
| | | | 100 feet upstream from center of Huntington Boulevard | *794 |
| | | Schaumburg Branch of Poplar Creek. | 100 feet upstream from center of Barrington Road | *788 |
| | | Tributary A of West Branch of Salt Creek. | 100 feet upstream from center of Basswood Street | *748 |
| | | | 100 feet upstream from center of Apricot Street | *755 |
| | | Salt Creek | 400 feet WNW from intersection of Park Lane and Newman Place | *817 |
| | Maps available for inspection at Clerk's Office, 1200 N. Gannon Drive, Hoffman Estates, Illinois 60196. | | | |
| | Send comments to Honorable Virginia Hayter, 1200 N. Gannon Drive, Hoffman Estates, Illinois 60196. | | | |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Illinois | (C) Mascoutah, St. Clair County | Silver Creek | Approximately 3,500 feet downstream of Louisville and Nashville Railroad | *422 |
| | | | Just downstream of State Route 177 | *423 |
| Maps available at City Manager's Office, Municipal Building, 3 West Main Street, Mascoutah, Illinois. | | | | |
| Send comments to Honorable Leroy Perrottet, Mayor, City of Mascoutah, Municipal Building, 3 West Main Street, Mascoutah, Illinois 62258. | | | | |
| Louisiana | Unincorporated Areas of Assumption Parish. | Bayou St. Vincent | Just upstream of Bridge 6 | *11 |
| | | | Just upstream of Bridge 7 | *12 |
| | | | Just downstream of Bridge 8 | *12 |
| Maps available for inspection at Assumption Parish Police Jury Office, Louisiana Highway 1—Courthouse Street, Napoleonville, Louisiana 70390 | | | | |
| Send comments to Mr. Paul J. Cancienne, President, Assumption Parish Police Jury, P.O. Box 510, Napoleonville, Louisiana 70390, or Mr. C. J. Savoie, Parish Engineer, P.O. Drawer R, Paincourtville, Louisiana 70391. | | | | |
| Maine | Standish, Town, Cumberland County. | Saco River | Downstream Corporate Limits | *183 |
| | | | Upstream of Bonny Eagle Hydro Station Dam | *222 |
| | | | Approximately 200' downstream of State Route 25 | *228 |
| | | | Approximately 1,800' upstream of State Route 25 | *236 |
| | | | Approximately 5,400' upstream of State Route 25 | *242 |
| | | | Confluence of Strout Brook | *251 |
| | | | Approximately 530' upstream of State Route 11 | *256 |
| | | | Upstream Corporate Limits | *263 |
| | | Saco River Left Channel | Downstream Corporate Limits | *204 |
| | | | Upstream side of State Route 35 | *214 |
| | | | Downstream side of Bonny Eagle Dam | *216 |
| | | | Confluence with Saco River | *222 |
| Maps available at the Code Enforcement Office, Standish, Maine. | | | | |
| Send comments to the Honorable Ronald Sawyer, First Selectman of the Town of Standish, Town Hall, Standish, Maine 04084 | | | | |
| Maryland | Aberdeen, Town, Harford County | Swan Creek | Michael Lane Extended | *12 |
| | | | Northeast Corporate Limits | *131 |
| | | | Confluence of Carsins Run | *141 |
| | | | State Route 462 (downstream side) | *146 |
| | | | State Route 462 (upstream side) | *153 |
| | | | Approximately 2,470' upstream of State Route 462 | *170 |
| | | Carsins Run | Confluence with Swan Creek | *141 |
| | | | Approximately 1,000' upstream of confluence with Swan Creek | *157 |
| | | | Maxu Road (upstream side) | *167 |
| | | | Upstream Corporate Limits | *180 |
| | | Tributary to Romney Creek | Downstream Corporate Limits | *57 |
| | | | Conrail Culvert (upstream side) | *64 |
| Maps available at the Municipal Building, 3 West Bel Air Avenue, Aberdeen, Maryland. | | | | |
| Send comments to Honorable Raymond Warfield, President of the Aberdeen Board of Commissioners, P.O. Box 70, 3 West Bel Air Avenue, Aberdeen, Maryland 21001. | | | | |
| Massachusetts | East Brookfield, Town, Worcester County. | Quaboag Pond | Entire shoreline within corporate limits | *606 |
| | | Quacumquasit Pond | Entire shoreline within corporate limits | *606 |
| | | East Brookfield River | Entire shoreline within corporate limits | *607 |
| | | Lake Lashaway | Entire shoreline within corporate limits | *618 |
| | | Sevenmile River | Confluence with East Brookfield River | *607 |
| | | | Downstream Podunk Street | *613 |
| | | | Upstream corporate limits | *624 |
| | | Great Brook | Confluence with East Brookfield River | *607 |
| | | | Downstream Draper Street | *620 |
| | | | Downstream Sturbridge Road | *624 |
| | | Dunn Brook | Downstream corporate limits | *609 |
| | | | Upstream corporate limits | *615 |
| | | Perry Pond Stream | Confluence of Dunn Brook | *613 |
| | | | Upstream corporate limits | *623 |
| Maps available at the Town Hall, East Brookfield, Massachusetts. | | | | |
| Send comments to Honorable Louis Pettruzzi, Chairman of the Board of Selectmen of East Brookfield, Town Hall, East Brookfield, Massachusetts 01515. | | | | |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Massachusetts | Ludlow, Town, Hampden County | Broad Brook | Confluence with Chicopee River | *281 |
| | | | Approximately 0.5 mile upstream of confluence with Chicopee River | *291 |
| | | | Approximately 0.75 mile upstream of confluence with Chicopee River | *302 |
| | | | Alden Pond Dam (downstream) | *310 |
| | | | Alden Pond Dam (upstream) | *324 |
| | | | Piney Lane (upstream) | *329 |
| | | Chicopee River | Downstream Corporate Limits | *141 |
| | | | Western Massachusetts Electric Dam (downstream) | *150 |
| | | | Western Massachusetts Electric Dam (upstream) | *168 |
| | | | Conrail Bridge approximately 1.5 miles above Corporate Limits (upstream). | *175 |
| | | | State Route 21 (downstream) | *180 |
| | | | Ludlow Dam (downstream) | *194 |
| | | | Ludlow Dam (upstream) | *214 |
| | | | Conrail Bridge approximately 3.3 miles above Corporate Limits (upstream). | *216 |
| | | | Miller Street (downstream) | *224 |
| | | | Interstate 90 (upstream) | *234 |
| | | | Red Bridge Dam (downstream) | *245 |
| | | | Red Bridge Dam (upstream) | *281 |
| | | | Upstream Corporate Limits | *281 |
| | | Higher Brook | Downstream Corporate Limits | *174 |
| | | | West Street (upstream) | *193 |
| | | | Approximately 1.5 miles upstream of Corporate Limits | *201 |
| | | | Holyoke Street Dam (downstream) | *210 |
| | | | Holyoke Street Dam (upstream) | *218 |
| | | | Center Street (downstream) | *228 |
| | | | Center Street (upstream) | *230 |
| | | | Private Road approximately 1 mile upstream of Center Street (upstream). | *238 |
| | | | Approximately 0.25 mile downstream of upstream Corporate Limits | *243 |
| | | | Upstream Corporate Limits | *265 |
| | Maps available at the Office of Planning and Engineering, Ludlow, Massachusetts. | | | |
| | Send comments to Honorable Nicholas Ruggerio, Chairman of the Board of Selectmen, Town of Ludlow, Town Hall, 488 Chapin Street, Ludlow, Massachusetts 01056. | | | |
| Minnesota | (Uninc.), Morrison County | Skunk River | About one mile upstream State Highway 25 | *1,140 |
| | | | Just upstream of County Road 251 | *1,151 |
| | | | Just downstream of County Highway 39 | *1,156 |
| | | Little Elk River | Just upstream of County Road 211 | *1,143 |
| | | | Just downstream of County Road 209 | *1,159 |
| | | | Just upstream of County Road 209 | *1,161 |
| | | | At the City of Randall eastern corporate limits | *1,165 |
| | | South Branch Little Elk River | At the southern corporate limit for the City of Randall, about 2,000 feet downstream of State Highway 6. | *1,173 |
| | | | Just downstream of State Highway 6 | *1,174 |
| | | Swan River | About 4.9 miles above State Highway 238 | *1,123 |
| | | | Just downstream of County Highway 18 | *1,124 |
| | | Platte River | Just upstream of State Highway 27 | *1,114 |
| | | | At the confluence of Little Mink Creek | *1,117 |
| | | Mississippi River | At the southern corporate limits of the City of Little Falls | *1,092 |
| | Maps available at Office of the County Zoning Administrator, Morrison County, Morrison County Courthouse, Little Falls, Minnesota. | | | |
| | Send comments to the Honorable Gilbert Kapsner, Chairman of the County Board, Morrison County, Morrison County Courthouse, Little Falls, Minnesota 56345. | | | |
| Missouri | (C) Wellston, St. Louis County | Engelholm Creek | Downstream corporate limits (about 400 feet downstream of Maple Street). | *490 |
| | | | About 80 feet downstream Maple Street | *496 |
| | | | Just upstream of Bartmer Industrial Drive | *502 |
| | | | About 580 feet upstream of Plymouth Avenue | *510 |
| | | | Just upstream of Page Boulevard | *513 |
| | | | Just downstream Terminal Railroad Association | *518 |
| | | | Upstream corporate limits (just upstream of Norfolk & Western Railway). | *523 |
| | | Engelholm Creek Bypass | Downstream corporate limits (at center of Maple Street) | *495 |
| | | | About 560 feet upstream of Maple Street | *500 |
| | Maps available at City Hall, Wellston Land Clearance Authority, 6205 Martin Luther King, Jr. Drive, Wellston, Missouri | | | |
| | Send comments to Honorable Johnnie Henderson, Mayor, City of Wellston, City Hall, 6205 Martin Luther King, Jr. Drive, Wellston, Missouri 63133. | | | |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| New York | Hamburg, Town, Erie County | Eighteen Mile Creek | Approximately 400' downstream of Lake Shore Road | *580 |
| | | | State Route 5 upstream | *588 |
| | | | Upstream Conrail Track upstream | *610 |
| | | | Upstream Route 20 downstream | *623 |
| | | | Coincident with Corporate Limits approximately 400' downstream of South Creek Road. | *714 |
| | | | Conrail upstream | *744 |
| | | | Pierce Avenue Upstream | *755 |
| | | | Corporate Limits | *768 |
| | | | Carpenter Road (extended) | *791 |
| | | | Upstream Corporate Limits | *802 |
| | | Hampton Brook | Confluence with Eighteen Mile Creek | *758 |
| | | | Upstream Corporate Limits | *781 |
| | | Eighteen Mile Creek North Branch. | Confluence with Eighteen Mile Creek | *797 |
| | | | Upstream Corporate Limits | *802 |
| | | Eighteen Mile Creek South Branch. | Confluence with Eighteen Mile Creek | *798 |
| | | | Approximately 620' upstream of Farm Road | *805 |
| | | Buttermilk Falls Creek | Approximately 60' downstream of North Creek Road | *696 |
| | | | North Creek Road upstream | *707 |
| | | | Approximately 90' upstream of Lakeview Road | *730 |
| | | Bemcks Creek | Approximately 300' downstream of Lake Shore Road (State Route 5) | *581 |
| | | | Mt. Vernon Drive Downstream | *609 |
| | | | Mt. Vernon Drive upstream | *617 |
| | | | Conrail downstream | *617 |
| | | | Conrail upstream | *639 |
| | | | Downstream Golf Course Road upstream | *677 |
| | | | U.S. Route 20 upstream | *692 |
| | | | Upstream Corporate Limits | *754 |
| | | Waterfalls Village Creek | Confluence with Lake Erie | *581 |
| | | | Conrail downstream | *608 |
| | | | Conrail upstream | *627 |
| | | | Approximately 250' upstream of Howard Road | *670 |
| | | Foster Brook | Confluence with Lake Erie | *581 |
| | | | State Route 75 upstream | *590 |
| | | | Conrail downstream | *597 |
| | | | Conrail upstream | *610 |
| | | | U.S. Route 20 upstream | 716 |
| | | | Sowles Road upstream | *742 |
| | | | Approximately 120' upstream of Maslov Drive | *793 |
| | | Rush Creek | Conrail upstream | *628 |
| | | | South Park Avenue upstream | *655 |
| | | | State Route 20 upstream | *668 |
| | | | Bayview Road upstream | *725 |
| | | | Clark Road downstream | *796 |
| | | | South Abbott Road upstream | *845 |
| | | South Branch | Corporate Limits downstream | *602 |
| | | Smokes Creek | Lake Avenue upstream | *620 |
| | | | Corporate Limits upstream | *642 |
| | | Tributary to South Branch Smokes Creek. | Confluence with South Branch Smokes Creek | *625 |
| | | | Milestrip Road | *667 |
| | | | Nile Road upstream | *680 |
| | | | Approximately 950' upstream of Nile Road | *683 |

Maps available at the Hamburg Town Engineer's Office.

Send comments to Honorable Leo Farlon, Hamburg Town Supervisor, S-6100 South Park Avenue, Hamburg, New York 14075

| | | | | |
|---|---|---|---|---|
| New York | Hamburg, Village, Erie County | Bemcks Creek | Downstream Corporate Limits | *752 |
| | | | Upstream Brookwood Drive | *768 |
| | | | Approximately 310 feet upstream of Sunset Drive | *775 |

Maps available at the Hamburg Village Hall.

Send comments to Honorable Carl Henry, Mayor of the Village of Hamburg, 100 Main Street, Hamburg, New York 14070

| | | | | |
|---|---|---|---|---|
| Ohio | (V) Whitehouse, Lucus County | Blue Creek | Downstream corporate limits | *639 |
| | | | Approximately 0.4 mile upstream Norfolk and Western Railway | *643 |
| | | Lone Oak Ditch (Downstream) | Downstream corporate limits | *643 |
| | | | Just downstream Whitehouse-Spencer Road | *645 |
| | | Lone Oak Ditch (Upstream) | Just downstream Archbold-Whitehouse Road | *652 |
| | | | Just upstream Archbold-Whitehouse Road | *655 |
| | | | Upstream corporate limits | *656 |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | Disher Ditch (Downstream) | At confluence with Blue Creek | *641 |
| | | | At upstream corporate limits | *642 |
| | | Disher Ditch (Upstream) | Just upstream of Providence Street | *653 |
| | | | About 1,900 feet upstream of Providence Street | *653 |
| | | Swan Creek | Downstream corporate limits | *639 |
| | | | Upstream corporate limits | *640 |
| Maps available at Village Hall, 6655 Providence Street, Whitehouse, Ohio. | | | | |
| Send comments to Honorable Donald Nofzinger, Mayor, Village of Whitehouse, Village Hall, 6655 Providence Street, Whitehouse, Ohio 43571. | | | | |
| Pennsylvania | Aston, Township, Delaware County. | Chester Creek | Downstream Corporate Limits | 831 |
| | | | Upstream Bridgewater Road | *40 |
| | | | Upstream Dutton Mill Road | *49 |
| | | | Downstream Knowlton Road | *59 |
| | | | Upstream Mt. Alverno Road | *67 |
| | | | Upstream of Dam | *78 |
| | | | Upstream Pennell Road | *83 |
| | | | Approximately 1,600' downstream of Convent Road | *93 |
| | | | Downstream Convent Road | *102 |
| | | | Downstream Hollow Hill Road | *105 |
| | | | Approximately 1,200' downstream of Lenni Road | *107 |
| | | | Downstream Lenni Road/Corporate Limits | *114 |
| | | West Branch Chester Creek | Confluence with Chester Creek | *105 |
| | | | Upstream New Road | *112 |
| | | | Upstream of downstream Dam | *121 |
| | | | Upstream of upstream Dam | *136 |
| | | | Approximately 2,000' downstream of Aston Mills Road | *139 |
| | | | Approximately 1,000' upstream of Aston Mills Raod | *147 |
| | | | Approximately 2,000' upstream of Aston Mills Road | *162 |
| | | | Approximately 3,000' upstream of Aston Mills Road | *167 |
| | | | Approximately 1,000' downstream of Valley Brook Road | *171 |
| | | | Corporate Limits/Valley Brook Road | *173 |
| Maps available at the Township Building, 233 Pennell Road, Aston, Pennsylvania. | | | | |
| Send comments to Honorable Bob Divins, President of the Aston Board of Commissioners, 233 Pennell Road, Aston, Pennsylvania 19014. | | | | |
| Pennsylvania | Bethel Park, Municipality Allegheny County. | Graesers Run | Downstream Corporate Limits | *998 |
| | | | Brookside Boulevard (Upstream) | *1,010 |
| | | | Approximately 1,200' upstream of Brookside Boulevard | *1,020 |
| | | Piney Fork | Downstream Corporate Limits | *982 |
| | | | Upstream Library Road | *987 |
| | | | Upstream of First Footbridge | *1,004 |
| | | | Upstream of 6th Footbridge | *1,013 |
| | | | Upstream of Irishtown Road | *1,035 |
| | | | Approximately 500' upstream of Irishtown Road | *1,039 |
| | | Tributary 1 to Piney Fork | Confluence with Piney Fork | *983 |
| | | | Upstream Library Road | *991 |
| | | | Upstream Alleghney County Port Authority Righ-of-way | *994 |
| | | | Upstream Beagle Drive | *1,007 |
| | | | Upstream West Kings School Road | *1,031 |
| | | | Approximately 900' upstream of West Kings School Road | *1,039 |
| Maps available at the Bethel Park Library, Bethel Park, Pennsylvania. | | | | |
| Send comments to Honorable James Martin, Manager of Bethel Park, 5100 West Library Avenue, Bethel Park, Pennsylvania 15102. | | | | |
| Pennsylvania | Green Lane, Borough, Montgomery County. | Perkiomen Creek | Downstream Corporate Limits | *218 |
| | | | Confluence of Macoby Creek | *223 |
| | | | Upstream side of Conrail Bridge | *224 |
| | | | Upstream side of Park Road | *226 |
| | | | Upstream Corporate Limits | *227 |
| | | Macoby Creek | Confluence with Perkiomen Creek | *223 |
| | | | Upstream side of State Route 29 Bridge | *228 |
| | | | Upstream side of Conrail bridge (approximately 60' downstream of upstream Corporate Limits). | *235 |
| Maps available at the residence of the Borough Secretary, Ms. Barbara Turansky, 500 Main Street, Green Lane, Pennsylvania. | | | | |
| Send comments to Honorable Claude Balduzzi, Council President of Green Lane, P.O. Box 514, Green Lane, Pennsylvania 18054. | | | | |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Pennsylvania | Greenville, Borough Mercer County. | Shenango River | Corporate Limits (Downstream) | *942 |
| | | | Main Street (Upstream side) | *946 |
| | | | Corporate Limits (Upstream) | *950 |
| | | Little Shenango River | Confluence with Shenango River | *947 |
| | | | College Avenue (Upstream side) | *951 |
| | | | Corporate Limits (Upstream) | *958 |
| | Maps available at Municipal Building in the Council Chambers, Greenville, Pennsylvania. | | | |
| | Send comments to Honorable Walter Caswell, Council President, 125 Main Street, Greenville, Pennsylvania 16125. | | | |
| Pennsylvania | Kennett Square, Borough, Chester County. | West Branch Red Clay Creek | Upstream side of West Cypress Street Bridge | *277 |
| | | | Upstream Corporate Limits | *280 |
| | | East Branch Red Clay Creek | Downstream Corporate Limits | *283 |
| | | | Downstream side of Conrail Bridge | *292 |
| | | | Downstream side of East State Street Bridge | *300 |
| | | | Upstream Corporate Limits | *306 |
| | Maps available at the Borough Building, Broad and Linden Streets, Kennett Square, Pennsylvania. | | | |
| | Send comments to Honorable M. D. Fulton, Manager of Kennett Square, Borough Building, P O Box 5, Broad and Linden Streets, Kennett Square, Pennsylvania 19348. | | | |
| Pennsylvania | Lehigh, Township, Lackawanna County. | Lehigh River | Downstream Corporate Limits | *1,512 |
| | | | Locust Ridge Road (Upstream side) | *1,522 |
| | | | Private Road about 0.55 mile upstream of Locust Ridge Road (Upstream side). | *1,538 |
| | | | Confluence of Pond Creek about 1.5 miles upstream of Locust Ridge Road. | *1,554 |
| | | | Confluence of Buckley Run about 425 feet upstream of Pine Grove Road Extended. | *1,560 |
| | | | Confluence of Spuce Run (Upstream Corporate Limits) | *1,570 |
| | Maps available at the Lehigh Municipal Building, Thornhurst Community Center, Thornhurst, Pennsylvania. | | | |
| | Send comments to Honorable Eugene Williams, Chairman of the Lehigh Board of Supervisors, Box 110, Star Route, Gouldsboro, Pennsylvania 18424. | | | |
| Pennsylvania | Rochester, Township, Beaver County. | Beaver River | Downstream Corporate Limits | *704 |
| | | | Upstream Corporate Limits | *705 |
| | | Lacock Run | East Washington Street Bridge | *798 |
| | | | Approximately 520' upstream of East Washington Street Bridge | *814 |
| | | | Upstream side of Adams Street Bridge (downstream crossing) | *830 |
| | | | Approximately 500' upstream of Adams Street Bridge | *849 |
| | | | Upstream side of Adams Street Culvert | *868 |
| | | | Approximately 500' upstream of Adams Street Culvert | *885 |
| | | | Upstream side of Reno Street Bridge | *910 |
| | | | Upstream side of Private Drive Bridge approximately 550' upstream of Reno Street Bridge. | *937 |
| | | | Upstream of Private Drive Bridge approximately 850' upstream of Reno Street Bridge. | *949 |
| | | | Approximately 1,400' upstream of Reno Street Bridge | *977 |
| | | | Approximately 1,700' upstream of Reno Street Bridge | *996 |
| | | | Approximately 75 feet upstream of Private Drive Culvert located approximately 1,850' upstream of Reno Street Bridge. | *1,020 |
| | Maps available at Township Building, Rochester, Pennsylvania. | | | |
| | Send comments to Honorable Samuel A. Scriva, President of the Rochester Board of Commissioners, Sunflower Road, Rochester, Pennsylvania 15074. | | | |
| Pennsylvania | Upper Frederick, Township, Montgomery County. | Perkiomen Creek | Downstream Corporate Limits | *186 |
| | | | Old State 29 (Upstream side) | *194 |
| | | | Dam approximately 600' downstream of Snyder Road (Downstream side). | *196 |
| | | | Dam approximately 600' downstream of Snyder Road (Upstream side) | *204 |
| | | | Knights Lake Dam (Downstream side) | *211 |
| | | | Knights Lake Dam (Upstream side) | *218 |
| | | | Park Road (Upstream side) | *226 |
| | | | Green Lane Dam (Downstream side) | *230 |
| | | | Upstream Corporate Limits | *290 |
| | | Scioto Creek | Downstream Corporate Limits | *207 |
| | | | Faust Road (Upstream side) | *217 |
| | | | Perkiomenville Road (Upstream side) | *233 |
| | | | Hemback Road (Upstream side) | *248 |
| | | | Upstream Corporate Limits | *268 |
| | | Deep Creek | Deep Creek Dam (Upstream side) | *230 |
| | | | Green Lane Road (Upstream side) | *235 |
| | | | Upstream Corporate Limits | *243 |

Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| | | Swamp Creek | Downstream Corporate Limits | *231 |
| | | | Upstream Corporate Limits | *236 |
| | | Goschenhoppen Creek | Downstream Corporate Limits | *261 |
| | | | Faust Road (Downstream side) | *260 |
| | | | Approximately 410' upstream of Faust Road | *264 |
| | Map available at the Upper Frederick Township Building, State Route 73, Obelisk, Pennsylvania. | | | |
| | Send Comments to Honorable Anna M. Gottshalk, Chairperson of the Township of Upper Frederick, R.D. 2, Perkiomenville, Pennsylvania 18074. | | | |
| Texas | City of Atlanta, Cass County | Black Bayou | Just upstream of U.S. Highway 59 (West Main Street) | *230 |
| | | Haw Creek | Just downstream of Sawmill Road | *236 |
| | | | Just upstream of State Highway 251 (Holley Street) | *259 |
| | | Hurricane Creek | Just upstream of State Highway 251 (Holley Street) | *265 |
| | | North Tributary of Black Bayou | Just upstream of State Highway 77 | *242 |
| | | South Tributary of Black Bayou | Just upstream of State Highway 43 (North Louise Street) | *238 |
| | Map available for inspection at City Hall—440 North Lane, Atlanta, Texas. | | | |
| | Send Comments to Mayor David Johnson, or Mr. Sidney Davis, City Manager, City Hall, 440 North Lane, Atlanta, Texas 75551. | | | |
| Texas | City of Fredericksburg, Gillespie County. | Baron's Creek | Just downstream of Goehmann Street | *1,619 |
| | | | Just upstream of Creek Street | *1,656 |
| | | Town Creek | Just upstream of Washington Street | *1,687 |
| | | | Just upstream of Milam Street | *1,703 |
| | Map available for inspection at City Hall, 127 West Main, Fredericksburg, Texas 78624. | | | |
| | Send Comments to Mayor Kenneth Brown or Ms. Bernice Seipp, City Clerk, City Hall, 127 West Main, Fredericksburg, Texas 78624. | | | |
| Texas | City of Pearsall, Frio County | West Creek | Just upstream of West Medina Street | *603 |
| | | | Just upstream of Power Plant Road | *620 |
| | Map available for inspection at City Hall, 213 South Oak, Pearsall, Texas 78601. | | | |
| | Send Comments to Mayor Ruben Leal, or Mr. Andres Garcia, Jr., City Manager, City Hall, 213 South Oak, Pearsall, Texas 78061. | | | |
| Utah | Plain City (City), Weber County | Weber River | 500 feet south-southeast from intersection of 1500 North Street and 1400 North Street. | *4,227 |
| | Maps available at City Hall, Plain City, Utah. | | | |
| | Send comments to Honorable Samuel S. Lower, P.O. Box 2017, Plain City, Utah 84404. | | | |
| Utah | South Weber (City), Wever River | | 600 feet north of intersection of 475 East Street and the westbound lanes of Interstate 80. | *4,422 |
| | | | Intersection of river and center of the westbound lanes of Interstate 80. | *4,515 |
| | Maps available at City Hall, 7355 South 1375 East, South Weber, Utah. | | | |
| | Send Comments to Honorable Rex Bouchard, 7355 South 1375 East, South Weber, Utah 84403 | | | |
| Utah | Uintah (Town), Weber County | Weber River | 100 feet upstream from center of 6600 South Street | *4,435 |
| | | | Intersection of creek and most upstream corporate limits | *4,489 |
| | Maps available at City Hall, 2216 East 6550 South, Route 4, Uintah, Utah 84403. | | | |
| | Send comments to Honorable Robert D. Fermelius, 2216 East 6550 South, Route 4, Uintah, Utah 84403. | | | |
| Wisconsin | (V) Wrightstown, Brown County | Fox River | At downstream (northeastern) corporate limits | *602 |
| | | | Just upstream Ferry Street | *602 |
| | | | Western corporate limits | *603 |
| | | Plum Creek | Approximately 1.5 miles upstream from the mouth | *615 |
| | | | Approximately 1.8 miles upstream from the mouth | *617 |
| | Maps available at the Village Clerk's Office, Village Hall, Main Street, Wrightstown, Wisconsin. | | | |
| | Send comments to Honorable Robert Schaeuble, Village President, Village of Wrightstown, Village Hall, Main Street, Wrightstown, Wisconsin 54180. | | | |

(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)

Issued: August 7, 1980.

Gloria M. Jimenez,

*Federal Insurance Administrator.*

[FR Doc. 80-24976 Filed 8-19-80; 8:45 am]

BILLING CODE 6718-03-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[Docket No. 21310; RM-1847; RM-1984; and RM-2742]**

## FM Quadraphonic Broadcasting

**AGENCY:** Federal communications Commission.

**ACTION:** Prosposed rule making and memorandum opinion and order.

**SUMMARY:** Commission proposes specific standards for broadcasting compatible discrete and semi-discrete quadraphonic systems while it simultaneously asks for comments regarding the efficacy and practicality of adopting general standards. Denies CBS's petition for 4-2-4 quadraphonic standards as unnecessary and unenforceable.

**DATES:** Comments must be received on or before November 10, 1980, and reply comments must be received on or before January 9, 1981.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Albert S. Jarratt, Sr., Broadcast Bureau, (202) 653-7275.

**SUPPLEMENTARY INFORMATION:**

Adopted: July 17, 1980.

Released: August 14, 1980.

By the Commission.

### Introduction

1. A *Further Notice of Inquiry* was released in this proceeding on January 10, 1979 (FCC 79-1, FR 44 FR 3732). The primary purpose of the *Further Notice* was to obtain additional information concerning the impact that the adoption of quadraphonic broadcasting standards would have on the possibility of reducing the channel spacing in the FM broadcast band.

### Background

2. Earlier, the Commission had adopted a *Notice of Inquiry* on June 22, 1977 (FCC 77-44, FR 42 FR 34913) as a result of three petitions [1] which proposed rules and strandards for FM quadraphonic broadcasting. The objective of that *Notice* was to determine the degree of interest in quadraphonic broadcasting and, if sufficient interest was indicated, to develop a record to assist the Commission in formulating standards for the service.

3. Over 2,000 comments were received in response to the *Notice of Inquiry.* With few exceptions these favored some form of quadraphonic broadcasting. In general the comments equally favored 4-2-4 and 4-4-4 quadraphonic systems.[2] Broadcasters were also split in their preference for 4-2-4 and 4-4-4 systems. After analysis and review of the comments, the Commission concluded that there was substantial interest in FM quadraphonic broadcasting. Additionally, the commission detrermined from the technical data, that 4-4-4/4-3-4 quadraphonic systems can be accommodated within the present frequency assignment plan without objectional degradation to monophonic and sterophonic radio service. However, some doubt existed as to the feasibility of later reducing the channel spacing if quadraphonic standards were adopted.

4. Consequently, the Commission, in a meeting on September 14, 1978, determined that additional information was needed before standards could be proposed. Therefore, on January 2, 1979, the Commission adopted a *Further Notice of Inquiry ("FNOI")* to obtain information concerning the impact that the adoption of quadraphonic broadcasting standards would have on the possibility of later reducing the channel spacing in the FM broadcast band to 150 kHz or 100 kHz. In addition, the *FNOI* sought to explore the feasibility of operation of the various proposed quadraphonic systems within narrower channel spacings.[3] The *FNOI* explained that it may be necessary with 150 kHz channel spacing to restrict all baseband signals to within 75 kHz. It was acknowledged that such a reduction could preclude some of the proposed quadraphonic systems as well as affect present stereo and Subsidiary Communications Authorization (SCA) operations. The *FNOI* therefore requested comments concerning the effects on co-channel and adjacent channel protection ratios due to the operation of 4-2-4, 4-3-4, and 4-4-4 quadraphonic systems and SCA transmissions if FM channel separations were reduced to 150 kHz or 100 kHz. The Commission further stated that pending a determination regarding the efficacy of reducing FM channel spacings, it would consider adoption of quadraphonic broadcasting standard(s) only for such system(s) as could be clearly demonstrated to not preclude possible future reductions in channel spacing.

### Discussion

5. Although there were many comments received by the Commission relative to the FM channel spacing, the vast majority simply expressed disapproval of any change in channel spacing. Only a few addressed the primary question asked in the *FNOI.* Technical data was received from QSI, however, that indicated the transmission of a discrete four channel (4-4-4) quadraphonic signal does not create greater adjacent channel interference than presently permitted monophonic or stereophonic transmissions. Under certain conditions monophonic transmissions could be shown to create greater adjacent channel interference than the quadraphonic systems under consideration. The QSI data also indicated that the receiver characteristics determine the required FM signal strength ratio (protection ratio) for a given audio signal to interference ratio. This was corroborated by comments submitted by RCA. By extrapolating the National Quadraphonic Radio Committee (NQRC) [4] test data, RCA stated, it could

[1] Petitions were submitted by Pacific FM, Inc., [later changed to Quadracast Systems, Inc., (QSI) ], RM-1847, General Electric Company, (GE), RM-1984, and CBS, Inc., (CBS), RM-2742.

[2] Qradraphonic systems which have been proposed to date fall into three general categories, 4-2-4, 4-3-4, and 4-4-4. Where four independent or discrete audio sources are encoded by a "matrix" into two composite signals transmitted as compatible left and right stereo signals to be later decoded back into four audio signals, the system has been designated as a 4-2-4 system. Where the four independent or discrete audio sources are combined in a composite siginals and transmitted as a main channel plus either 2 or 3 subchannels, all to be later converted back into 4 (discrete in the case of 4-4-4) audio signals, the systems are designated as 4-3-4 or 4-4-4, respectively.

[3] Narrower channel spacings were suggested by a report issued by the Commission's Office of Chief Engineer entitled "FM Broadcast Channel Frequency Spacing" (FCC/OCE RS 75-06).

[4] In 1972 the Electronic Industries Association sponsored the National Quadraphonic Radio Committee whose objective was to report to the Commission its conclusions regarding quadraphonic FM broadcasting standards. In November, 1975, the

Footnotes continued on next page

be shown ". . . that equally detrimental effects occur when narrowing channel spacings for FM quadraphonic systems as [compared] with currently authorized FM broadcast services". Quadraphonic transmissions would therefore be on an equal footing with existing FM broadcast services should narrower channel spacings be considered. This, RCA maintained, permitted the Commission to initiate the FM quadraphonic standards selection process without undue concern about particular compatibility situations. These views were supported by a number of other comments and were not disputed in any meaningful comments. RCA also commented that while the first order sidebands from a 4–4–4 transmission do not enter into the stereo subchannel of an adjacent FM channel with 150 kHz channel spacing, they may disturb the SCA operation or 4–4–4 reception on an adjacent FM channel. Comments on the importance of this problem are requested. Overall, these comments may be summarized as stating that (a) a reduction in channel spacing would not be precluded by adoption of quadraphonic standards, and (b) a reduction in the channel spacing would affect stereophonic broadcasting as well as quadraphonic transmissions.

6. From the data submitted, the Commission is persuaded that further consideration should be given to quadraphonic broadcasting standards. Our data analysis confirms the QSI and RCA comments regarding the minimal impact adoption of quadraphonic standards would have on the possibility of reducing the FM channel spacing. We are further persuaded that a reduction of the channel spacing would affect quadraphonic, stereophonic, and SCA transmissions similarly. In view of this we believe adoption of quadraphonic standards would not foreclose the possibility of exploring a reduction in the FM channel spacing in a future proceeding.[5] Consequently, we are proposing to amend our rules to permit quadraphonic broadcasting.

7. The FCC has reviewed the formal proposals for quadraphonic broadcast systems made by QSI, General Electric (GE), and CBS, Inc. (CBS). In addition, we have examined those submitted by Cooper-UMX, NRDC, Zenith Radio Corporation (Zenith), Sansui, and RCA Corporation (RCA). The following objectives, outlined in the *Further Notice of Inquiry*, were used in our review of the different systems suggested:

a. any standards established must be compatible with the present monophonic and stereophonic broadcasting service;

b. any system proposed should be capable of providing the highest quality service at reasonable cost, and

c. any standards established should be as broad as practical to permit the marketplace (broadcasters and listening public) to influence the selection between competing systems.

The FCC has identified two alternative approaches for providing standards for quadraphonic broadcasting, both of which appear to be consistent with these objectives. The first set of standards ("specific standards") would provide for a compatible 4–3–4/4–4–4 system of quadraphonic broadcasting similar to the systems proposed by QSI and RCA. Compatibility between the 4–3–4 and 4–4–4 modes will permit 4–4–4 transmissions to be received in either the 4–4–4, 4–3–4, stereophonic, or monophonic format. Transmissions in the 4–3–4 mode will be capable of reception in either the 4–3–4, stereo, or monophonic format. The Commission anticipates receivers will be produced that will have the capability to automatically detect and adjust for transmissions to either the 4–4–4 or 4–3–4 modes. This proposal for specific standards would permit licensees the flexibility to choose the quadraphonic mode best suited for their individual needs. It would provide listeners with a quadraphonic signal that is compatible with present stereo transmissions that may be decoded for high quality discrete quadraphonic reproduction (assuming transmissions in the 4–4–4 mode). It further could be decoded for slightly lower quality 4–3–4 quadraphonic reproduction in marginal signal areas (again assuming 4–4–4 transmissions). In areas where quadraphonic reception is not possible, the quadraphonic signal may be decoded in either the stereophonic or monophonic format.

8. Under the specific standards being proposed, further consideration would not be given to the systems proposed by Cooper-UMX, NDRC, GE, and Zenith. Commission concerns with certain characteristics of these systems were noted in the *FNOI*. These dealt with the complexity and/or performance deficiencies of these systems as compared to the QSI and RCA systems. None of the comments received in response to the *FNOI* have altered the Commission's findings with respect to them. Therefore, for the specific standards proposal, we find no reason to examine these systems further. Instead, this proposal focuses solely on the RCA and QSI systems and the possibilities they offer for a compatible hierarchy of quadraphonic broadcasting options.

9. Even greater flexibility would be afforded licensees and listeners under the alternative to the "specific standards" approach outlined above. This proposal is termed the "general standards" approach and would rely totally on the marketplace to determine which quadraphonic systems would be used. Only the minimum standards necessary to protect the existing allocation structure and insure the compatibility of the transmitted signal with existing receivers would be adopted. The operation of any quadraphonic transmission system that meets the general standards would be permitted under this approach. This includes those systems excluded from further consideration under the specific standards approach and any others which might be developed at a later date. Further discussion of this option is contained in paragraph 14. Under either approach, standards are not being proposed for the 4–2–4 system submitted by CBS, or for any other 4–2–4 system (such as Sansui). Further discussion of this decision is contained in paragraph 19.

10. The specific standards being proposed are based on the RCA and QSI system proposals. The similarities between them were noted in the *FNOI*. The RCA system emphasis is on the compatible 4–3–4/4–4–4 aspect while the QSI system emphasis in on a 4–4–4 system. However, the QSI proposal includes a 4–3–4 option that is almost identical with the proposed RCA system. Both systems use 76 kHz for a third quadraphonic subcarrier. The RCA proposal specifies that the front minus back signal modulate the second quadraphonic subcarrier and the diagonal or criss-cross signal modulate the third quadraphonic subcarrier. The QSI proposal specifies that the diagonal signal modulate the second quadraphonic subcarrier and the front minus back signal modulate the third quadraphonic subcarrier. However,

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NQRC submitted its report and conclusions. This report consists of two volumes, of which Volume One is a summary of the tests and conclusions and Volume Two, consisting of 5 Parts, includes the various tests on receivers, interconnecting facilities, transmitters, field tests, and compatibility tests. This report was made a part of the record in this proceeding.

[5] However, the investment in FM quadraphonic equipment added to that of existing stereo and mono equipment, all of which would be adversely affected by reduced channel spacing, would increase the cost associated with an action which would reduce such spacing. Would the economic and political arguments which could be raised against a reduction in channel spacing thus be significantly strengthened? Comments are requested on the importance of this aspect of adopting standards for FM quadraphonic broadcasting.

during the NQRC tests the signals on these two subcarriers were switched by QSI to agree with that suggested by RCA. RCA proposes a second pilot subcarrier in phase quadrature at 76 kHz to control receiver mode switching. Also RCA suggests that the presence of a signal modulating the 38 kHz quadrature subcarrier could be used to indicate 4–3–4 quadraphonic transmission. QSI suggests that the 19 kHz pilot be used for the freq/phase reference of all subcarriers including SCA. Although QSI mentions that a second pilot may be inserted for mode indication, it states that such an insertion may increase overall intermodulation and multipath susceptability. Therefore, QSI suggests that the presence of quadraphonic information may be used to automatically switch quadraphonic receiving modes and to indicate quadraphonic presence.

11. The Commission's preference for switching and mode indication techniques that minimize the use of additional pilot tones was noted in the FNOI. Comments indicate that additional pilot tones (except for the possibility of submerged tones) are both unnecessary and undesirable. Informal comments to the Commission indicate that a submerged switching tone (more than 60 decibels below 90 percent modulation of the main carrier) in the vicinity of 16 to 17 kHz may be practical to indicate which quadraphonic mode is being transmitted and to provide automatic receiver mode switching as well as accomplish other functions such as to indicate the operation of noise reduction circuitry. The Commission is aware that QSI has been demonstrating a custom receiver that requires no switching tones, being actuated by the presence of subchannel information. However, the Commission does not know at this time if automatic mode switching without submerged tones will be satisfactory in marginal signal areas or if it will be necessary for the listener to make a manual adjustment. This may be a function of the design of the receiver. Further comments in this regard are requested. Comments were requested in the FNOI regarding this matter but few were received. Comments are also solicited on whether the Commission should require any submerged tones and how that might affect the introduction of new systems not now before the Commission.

12. The specific standards we are proposing will allow licensees to select the particular transmission mode which best suits their needs as well as those of their particular listening audience. The primary considerations of the proposed quadraphonic modes that would be available to broadcasters are as follows:

*4–4–4.* Stations presently equipped for stereo face greater expense to implement this service than would be encountered in implementing 4–2–4 service and quadraphonic station coverage may be reduced somewhat. However, many commenting parties expressed the view that 4–4–4 provides the best overall quadraphonic performance. Existing SCA operations would have to be changed when tranmitting in this mode.

*4–3–4.* Stations opting for this mode would face expenses similar to those required for 4–4–4. However, potential loss of quadraphonic coverage is reduced and existing SCA operations would be unaffected. The 4–3–4 mode is considered to have many of the desirable characteristics of the 4–4–4 mode. Although some believe that 4–3–4 has certain inherent limitations, others believe it has advantages. Since 4–3–4 and 4–4–4 transmissions are compatible a single decoder can decode either transmission mode.

13. The Commission desires to permit competition in the marketplace to influence to the greatest extent practical, feasible and consistent with the public interest, the quadraphonic choices available to the FM station licensee and its listeners. The specific standards approach permits the station licensee the flexibility of free choice between the major quadraphonic modes. If the station, transmitting in stereo, with or without SCA, elects to make no changes or to transmit 4–2–4 quad, so be it. If the station elects to transmit a 4–3–4 version of quad while retaining its usual SCA operation it may do so, incurring some expense to convert its studio equipment to 4 channels and suffering an almost insignificant loss of station coverage. However, if the station elects to transmit a 4–4–4 mode of quad while incurring the similar expenses of 4–3–4 with some additional loss of station coverage plus the requirement of either moving any SCA operation to 95 kHz (see paragraph 22) or otherwise discontinuing the SCA operation, it may do so. Likewise, the listener would also have the flexibility of choosing between stereo, 4–3–4, or 4–4–4 if the station is transmitting in a 4–4–4 mode. In marginal signal areas the listener may prefer to listen in a 4–3–4 mode although the station is transmitting in a 4–4–4 mode. The compatibility between the 4–3–4 and 4–4–4 modes will permit this receiving choice.

14. As an alternative to the adoption of specific quadraphonic transmission standards, the Commission requests comments on the desirability of adopting general standards. Under this proposal the transmission of *any* quadraphonic signal that meets a general set of standards would be permitted. These standards would require the quadraphonic signal to be compatible with the existing allocation structure and existing monophonic and sterophonic receivers. No minimum performance requirement for the quadraphonic systems would be established under this proposal. For example, no minimum separation requirement would be specified between front and rear channels or between left and right rear channels. The present stereo performance standards would be retained but comparable standards for quadraphonic broadcasting would not be adopted. No general standards are contained in the appendix. Rather, we request comments on the practicality of such an approach and on the minimum standards necessary to safeguard our present allocation structure and permit continued use of existing receivers.

15. One alternative which is not recommended or set forth in this item is that the Commission could choose only one of the systems to the exclusion of any other *i.e.*, specifying only the 4–4–4 mode, or only the 4–3–4 mode. Since the quadraphonic systems included in the specific standards proposal are compatible with each other and with existing monophonic and sterophonic systems, such a limitation on the choices of broadcasters and listeners has virtually no benefits but would prevent the accural of the many benefits as identified below which would derive from having several systems authorized. Therefore, even the more limiting specific standards which are being proposed allow a range of options over which those affected may choose.

16. There are two basic differences between the general and specific standards as proposed. One difference is that, under the specific standards approach, only systems which have at least the minimum standards of existing systems will be acceptable to the Commission. Thus, if a new system of quadraphonic broadcasting is developed which has vastly improved separation characteristics but offers this advantage only with slightly reduced frequency response, it would not be acceptable for use under the specific standards. On the other hand, the general standards would insure that the Commission's concerns regarding interference and international agreements were adequately covered but would not set forth minimum limits

on performance characteristics which are of interest to listeners.

17. The other difference is that the general standards would allow the use of any quadraphonic systems which protected the Commission's concerns regarding interference, compatibility with existing receivers, and international agreements even though such systems might be incompatible with other quadraphonic systems available or already in use. The advantages attached to the general standards and to a somewhat lesser extent to the specific standards are essentially that:

(1) the technology of quadraphonic broadcasting continues to be free to develop within confines which protect Commission concerns, and

(2) broadcasters and listeners choose which quadraphonic system is more appropriate for their needs, e.g., a system with greater coverage but poorer frequency response may be best for one station while another station may opt for superior frequency response with a concomitant loss of coverage area. Indeed, as described above, there are several significant differences ranging from subcarrier use to performance characteristics in the currently known systems.

18. In order to enhance the ability of the Commission to choose among the alternatives for rulemaking, several pieces of economic information are sought. Specifically:

(1) What is the expected selling price and cost of installation (including any necessary modification to existing equipment) for each of the proponents' systems?

(2) What is the added cost to the consumer of receiving equipment which has each system's quadraphonic reception capability? (Presumably, this estimate will be the incremental cost to existing stereo receivers.)

(3) Is it possible to design systems which will enable reception of all or more than one of the proposed quadraphonic transmission methods?

(4) If a universal receiver (one which will decode all known quadraphonic systems) is possible, what would be the additional cost to the consumer of purchasing such a receiver? (The incremental cost information sought is the cost of adding this feature to a quadraphonic receiver designed to receive only one type of quadraphonic broadcast.)

(5) What are manufacturers' attitudes toward manufacturing and marketing multi-system equipment?

(6) If you think specific standards which narrow the acceptable range of technology should be adopted, do you base the conclusion on some unique aspect of the radio market or do you think that, as a general proposition, the government should select particular technologies for universal use?

(7) Is FM quad sufficiently advanced in its state of the art to enable the Commission to make a choice which would narrow the technological focus or should open technological development be allowed to continue?

(8) If the technology is to be narrowed to one or a few methods of producing FM quad, is the Commission the appropriate entity to make a selection or is there a better alternative?

(9) Would either specific or general standards adversely affect the degree of competition domestically or internationally?

(10) If the Commission should narrow the technological choices available to FM broadcasters, what criteria should it use to do so and how should they be weighted, namely, what factors do broadcasting and listeners value more highly and which less highly in the systems' characteristics?

19. Concerning the 4–2–4 system submitted by CBS, the Commission finds that adoption of standards for this system (or for any other 4–2–4 system) under either the specific or general approach is unnecessary. This type of quadraphonic broadcasting may be transmitted under present stereophonic standards. On August 9, 1972, the Commission issued a Public Notice (Mimeo No. 7599), concerning 4–2–4 transmission methods, which stated:

"The Commission said that the four-channel stereo systems being sold today are 'pseudo-enhancement devices relying on a phase-differential principle to achieve four-channel audio effects, and may be used within the FCC's present FM stereo transmission standards without specified authorization."

The Commission at this time reaffirms its policy as set forth in this Public Notice. As a practical matter it would be difficult for the Commission to enforce any 4–2–4 quad standards, as stations may unknowingly or inadvertently transmit such programming material. By declining to establish 4–2–4 quad standards, the Commission is permitting a flexibility that would be curtailed if any 4–2–4 quad standards were imposed. Therefore, the Commission finds no reason to adopt CBS's proposed standards since this quadraphonic mode is permitted at the present time and will continue to be.[6]

[6] As part of it's petition, CBS proposed an "identification signal" at 57 kHz phase locked to the 19 kHz pilot and at a modulation level of 2 to 3%.

**Other considerations**

20. Many comments were received from background music business companies and from blind or otherwise handicapped persons concerning the impact the adoption of quadraphonic broadcasting standards would have on present SCA services. These responses had many similarities. Most expressed a concern that the adoption of quadraphonic standards would mean the end of such services. Although this, in fact, is not true, some were very disturbed at such a possibility. These comments were made without a distinction between the various quadraphonic modes. As stated earlier in this document, only the specifically proposed 4–4–4 mode would have an adverse impact on any existing SCA services. If a licensee desires to transmit an existing SCA under the specific rules being proposed, it may do so by limiting its quadraphonic transmission to the 4–2–4 or 4–3–4 modes. Additionally, one of the quadraphonic systems which has been studied is capable of transmitting 4–4–4 without requiring changes to the 67 kHz SCA. However, in recognition of the impact the specific 4–4–4 quadraphonic broadcasting standards would have on SCA operation, we are proposing to permit subcarriers on the FM baseband up to and including 95 kHz. This subcarrier option is also available under the general standards for other 4–4–4 modes requiring SCA movement. As explained further in paragraphs 22 and 25, this expanded limit would also provide an opportunity for stations transmitting stereo, 4–2–4, or 4–3–4 quad, to operate a subcarrier at 95 kHz in addition to the one at 67 kHz.

21. It is expected that use of a 95 kHz subcarrier operation may require a low-pass audio filter having a cut-off frequency slightly lower than that presently used with existing SCA equipment. Present practice in most SCA operations is to roll-off the higher audio frequencies above 4 or 4.5 kHz and to limit the subcarrier deviation to ±4 kHz while simultaneously transmitting stereo. It appears from test data that a roll-off of audio frequencies above 3.5 kHz and a limit of the

The purpose of the tone was to actuate a signal lamp on the receiver to indicate the transmission of CBS's SQ version of 4–2–4 quadraphonic broadcasting. Comments received in response to the *FNOI* indicated that additional pilot tones are both unnecessary and undesirable. There are other less obtrusive techniques available for quadraphonic mode indication. Furthermore, there is evidence that additional pilot tones cause an increase in intermodulation and multipath problems. The use of submerged tones appears practical and feasible for indicating transmission modes or for other purposes without causing problems associated with pilot tones. See paragraph 11 for more discussion.

subcarrier deviation to '2.5 or 3 kHz may be necessary to give an acceptable crosstalk performance from a 95 kHz subcarrier. QSI proposed SCA standards at 95 kHz similar to those in use today, but RCA suggested that at 95 kHz the subcarrier be limited to a maximum modulating frequency of 2 kHz, an injection level of 5% and a deviation of ±2 kHz.

22. With the following exception, the Commission is not proposing new standards for SCA operation. We shall, however, permit the operation of subcarriers up to and including 95 kHz with instantaneous sidebands to 99 kHz. Section 73.319(b) presently limits subcarriers and sidebands to a maximum of 75 kHz. The Commission will continue the present limit of 10% injection of any SCA subcarriers below 75 kHz simultaneous with stereo (and 4–3–4 quad) (Section 73.319(c)). It is proposing a 10% limit for all SCA subcarriers above 75 kHz regardless of the operating mode (monophonic, stereophonic or quadraphonic). Likewise the Commission will continue the existing emission limitations as specified in Section 73.317(a), (12) through (14) and will continue the present limit for SCA crosstalk [Section 73.319(e)] to no greater than —60 db into the monophonic, stereophonic or quadraphonic channels.

23. The Commission is aware that a shift in the SCA subcarrier from 67 to 95 kHz will cause expenditures and/or inconvenience on the part of the SCA lessor. However, the moving of the subcarrier does not mean the end of SCA services as some comments have indicated. An informal study by the Commission has revealed that, except for some early receivers, the change to a new subcarrier frequency is a relatively simple operation and can be accomplished without great expense and certainly does not mean the obsolescence of modern receivers. If the Commission proceeds as proposed in this rulemaking to allow a subcarrier at 95 kHz, this will permit an orderly shift of receivers from 67 to 95 kHz without any disruption of service for those licensees desiring to transmit in a 4–4–4 mode requiring SCA movement. This could be accomplished before any commencement of 4–4–4 quadraphonic trasmission (if that mode is desired) by the operation of two SCA subcarriers until a systematic change to the new frequency is completed.

24. In paragraphs 12 and 13 of this document, we discussed our belief that the marketplace (station licensee, station advertisers including SCA lessors and listeners, etc.) should influence the selection between the monpohonic/stereophonic/quadraphonic operating modes. Likewise, we feel that a local decision should determine whether a station continues with an existing 67 kHz SCA operation or elects to move the subcarrier to 95 kHz. As was pointed out earlier, if only general quadraphonic standards are adopted, this could include a decision to use a 4–4–4 system not requiring a change in SCA frequency. This local decision should permit the station to better serve its listeners and advertisers. As the Commission has never required any station to change from monophonic operation to stereophonic operation, it is not envisioned that quadraphonic broadcasting will someday become mandatory of use of an SCA at 67 kHz prohibited.

25. Although not mentioned in the Commission's earlier proceedings on quadraphonic broadcasting standards, or in comments thereto, our proposal for quadraphonic standards presents an opportunity for the FM station licensee to have an additional SCA channel simultaneous with stereo or 4–3–4 quad. By permitting subcarrier frequencies up to and including 95 kHz, this will permit a licensee with a 67 kHz subcarrier to add a subcarrier at 95 kHz using 10% injection at 95 kHz. We note that it may be desirable to phase-lock the 95 kHz subcarrier to the fifth harmonic of the 19 kHz pilot.

26. The frequency of the third quardraphonic subcarrier and other subcarriers above 75 kHz being proposed herein exceeds the 75 kHz baseband limitation specified in the Mexican-U.S. FM Broadcasting Agreement. Consequently, the 4–4–4 quadraphonic mode and SCA operations using frequencies above 75 kHz may not be used when the transmitting station is located within 199 miles of the U.S.-Mexican border pending further agreement with the Mexican government. The U.S.-Canada FM working agreement dues not, however, preclude such operation near the Canadian border.

27. The Commission will address the matter of quadraphonic modulation monitors at a later time. Also, the Commission is studying the desirability of requiring quadraphonic generators to be type-accepted. Type accepting generators may facilitate the substitution or addition of quadraphonic generators to existing tramitters.

28. Accordingly, pursuant to authority found in Section 4(i) and 303(g) and (r) of the Communications Act of 1934, as amended, it is proposed to amend Part 73 of the Commission's Rules and Regulations as set forth in the attached Appendix.

29. Further, it is ordered, That the petition, RM-2742, submitted by CBS is denied.

30. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before November 10, 1980 and reply comments on or before January 9, 1981. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

31. In accordance with Section 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying docket number 21310.

32. All filings made in this procedure will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

33. For further information concerning this proceeding contact Albert S. Jarratt, Sr., Broadcast Bureau, (202) 653–7275. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

34. We have determined that this proceeding is not one involving "conflicting private claims to a valuable privilege" in which *ex parte* contacts should be prohibited. *See Sangamon Valley Television Corp.* v. *U.S.*, 289 F.2d 211, 224 (D.C. Cir. 1959); *Action for Children's Television* v. *FCC*, 564 F.2d 458 (D.C. Dir. 1977). In this proceeding, even under the proposal that the Commission adopt specific rather than general standards for quadraphonic broadcasting systems, we do not believe that the Commission would be resolving "conflicting private claims to a valuable privilege in the sense that the *Sangamon* court intended in order for *ex parte* contracts to be strictly prohibited. All that is proposed in the rulemaking proceeding is the establishment of at least minimum technical standards of a quadraphonic system. Under both the specific and general approaches, any system that meets whatever standards

are adopted by the Commission will be permitted to operate. It is true that in this rulemaking proceeding, as in many of our rulemaking proceedings, some persons or entities are likely to benefit economically more than others. But this does not alter the fact that in proceedings such as this one in which we are essentially establishing technical standards, we are not resolving "conflicting private claims" since anyone who can meet the standards established is not foreclosed from benefiting economically from our action.

35. We believe that the interests of the parties and the integrity of our processes will be fully protected if the procedures requiring public disclosure of *ex parte* contacts adopted recently in General Docket No. 78-167, *Policies and Procedures Regarding Ex Parte Communications During Informal Rule Making Proceedings*, FCC 80-334 (June 30, 1980) are followed. Especially in a proceeding such as this one where our final decision will depend so heavily on an understanding and assessment of complex technical data, we do not believe it would serve the public interest in the efficient dispatch of our business or the ends of justice to restrict completely *ex parte* presentations. *See* Section 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j).

36. We are aware that in a somewhat similar rulemaking proceeding involving the adoption of technical standards to permit AM stereophonic broadcasting, In the Matter of *AM Stereophonic Broadcasting*, Docket No. 21313, FCC 76-638, October 19, 1978, we prohibited *ex parte* presentations. We believe that this approach may not have been compelled under *Sangamon* as a legal matter, and in future similar cases, we intend to follow the approach we are taking in this proceeding.

37. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of this proceeding in this matter, he or she should follow the Commission's procedures governing *ex parte* contacts in informal rule making. A summary of these procedures is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202-632-7000).

Federal Communications Commission.
William J. Tricarico,
*Secretary.*

**Appendix**

It is proposed that Part 73, Chapter I, Title 47 of the Code of Federal Regulations be amended as follows:

1. In § 73.297, the headnote and paragraphs (a) and (b) are amended to read as follows:

**§ 73.297 Stereophonic and quadraphonic broadcasting**

(a) FM broadcast stations may, without further authority, transmit stereophonic and quadraphonic programs in accordance with the technical standards set forth in § 73.322 and § 73.323 and upon installation of type accepted stereophonic or quadraphonic transmitting equipment and a type approved stereophonic or quadraphonic modulation monitor as appropriate. Prior to commencement of stereophonic or quadraphonic broadcasts, appropriate equipment performance measurements must be completed. Not that until such time as standards are established for thpe approval of quadraphonic modulation monitors and such monitors are available, a stereophonic modulation monitor is to be used.

(b) Each licensee or permittee engaging in stereophonic and quadraphonic broadcasting shall measure the pilot subcarrier frequency as often as necessary to ensure that it is kept at all time within 2 Hz of the authorized frequency. However, in any event, the measurement shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

2. In § 73.310, paragraph (c) is redesignated paragraph (d) and new paragraph (c) is added as follows:

**§ 73.310. Definitions.**

* * * * *

(c) *Quadraphonic broadcasting.*

*FM Quadraphonic Broadcast:* The transmission of a quadraphonic program by a single FM broadcast station utilizing the main channel and one or more quadraphonic subcarrier(s).

*LF (RF, LB, RB) Signal:* An audio signal component of a quadraphonic program intended to convey to the listener the intensity, time and location of sound predominantly to the left front (right front, left back and right back) of the center of the listener's area.

*Quadraphonic Program:* A program comprising four audio signals which are the LF signal, RF signal, LB signal and RB signal.

*Channel:* A transmission path.

*Crosstalk:* The electrical signal occurring in one transmission channel caused by an electrical signal impressed on another transmission channel.

*Electrical Separation:* The ratio of the intensity of the sum of the desired electrical signals present in a set of audio channel(s) to the intensity of the sum of the identical and undesired electrical signals present in another set of audio channel(s) when only the first set of audio channel(s) is energized.

*LF (RF, LB, RB) Audio Channel:* The transmission path of the LF (RF, LB, RB) signal.

*Main Channel Signal:* An audio signal consisting of the sum of the LF, LB, RB and RF signals which frequency modulates the main carrier.

*Quadraphonic Subcarrier:* A subcarrier used in FM quadraphonic broadcasting operating on a frequency which is a specified harmonic of the 19 KHz pilot subcarrier frequency and with a phase which has a specified relation to the phase of the 19 kHz pilot subcarrier.

*Subchannel:* A transmission path occupying a specified band of frequencies including the subcarrier and associated sidebands.

*Quadraphonic Subchannel:* A subchannel in which a quadraphonic subcarrier is modulated by a specified combination of the LF, RF, LB, and RB signals.

*Quadrature:* The relation between two sinusoidal functions of equal period when the phase difference between them is ¼ of a period.

*Quadraphonic Baseband Signal:* A signal which is composed of the main channel signal and the quadraphonic subcarrier signals and which frequency modulates the main carrier.

*Composite Baseband Signal:* A signal which is composed of all signals which frequency modulate the main FM carrier.

*Positive-Baseband Signal:* At the instant when a positive (negative) composite baseband signal is aplied, the main carrier shall be modulated in the upward (downward) deviation from the center frequency.

*Subchannel Signal Polarity:* The contribution of a subchannel signal to the composite baseband signal is positive whenever the instantaneous subcarrier and its modulating signal have the same sign and is negative whenever the instantaneous subcarrier and its modulating signal have the opposite sign.

3. Section 73.319 is amended to read as follows:

**§ 73.319 Subsidiary communications multiplex operations: engineering standards.**

(a) Frequency modulation of SCA subcarriers shall be used.

(b) The instantaneous frequency of SCA subcarreirs and sidebands shall at all times be within the range 20 to 99 kHz: provided, however, that when the station is engaged in stereophonic and quadraphonic broadcasting pursuant to § 73.297, or § 73.597 and § 73.322 or quadraphonic broadcasting with two quadraphonic subcarriers pursuant to § 73.297 or § 73.597 and § 73.323(a), the instantaneous frequency of SCA subcarriers shall at all times be within the ranges 53 to 99 kHz, and that when the station is engaged in quadraphonic broadcasting with three quadraphonic subcarriers pursuant to § 73.297 or § 73.597 and § 73.323(b), the instantaneous frequency of SCA subcarriers shall at all times be within the range 91 to 99 kHz.

(c) The arithmetic sum of the modulation of the main carrier by all SCA subcarriers shall not exceed 30%: Provided however, that when a station is engaged in stereophonic broadcasting, pursuant to § 73.322 and § 73.297 or § 73.597 or quadraphonic broadcasting pursuant to § 73.297 or § 73.597 and § 73.323 the arithmetic sum of the modulation of the main carrier by the SCA subcarriers below 75 kHz shall not exceed 10%. Modulation of the main carrier by any SCA subcarrier above 75 kHz shall be limited to a maximum of 10% for all broadcasting modes.

(d) The total modulation of the main carrier, including SCA subcarriers, shall meet the requirements of § 73.1570.

(e) Frequency modulation of the main carrier caused by the SCA subcarrier operation shall, in the frequency range 50 to 15,000 Hz be at least 60 dB below 100% modulation: Provided however, that when the station is engaged in stereophonic or quadraphonic broadcasting pursuant to § 73.297, or § 73.597 and § 73.322 or quadraphonic broadcasting with two quadraphonic subcarriers pursuant to § 73.297 or § 73.597 and § 73.323(a) frequency modulation of the main carrier by the SCA subcarrier operation shall, in the frequency range 50 to 53,000 Hz, be at least 60 dB below 100% modulation, and that when the station is engaged in quadraphonic broadcasting with three quadraphonic subchannels pursuant to § 73.297 or § 73.597 and § 73.323(b), frequency modulation of the main carrier by the SCA subcarrier operation shall, in the frequency band 50 to 91,000 Hz, be at least 60 dB below 100% modulation.

(f) The center frequency of each SCA subcarrier shall be kept at all times within 500 Hz of the authorized frequency. However, when a station is engaged in quadraphonic broadcasting pursuant to § 73.323(b) the SCA subcarrier frequency shall be at 95 kHz and be phase locked to the fifth harmonic of the 19 kHz pilot subcarrier and shall cross the time axis in a steady state condition with a positive slope simultaneously with the crossing of the pilot subcarrier.

4. New § 73.323 is added to read as follows:

**§ 73.323 Quadraphonic transmission standards.**

(a) Quadraphonic transmission standards using the main channel and two subcarriers shall be in accordance with the following standards (4–3–4 mode):

(1) The modulating signal for the main channel shall consist of a signal which is the sum of the left front, left back, right front and right back signals.

(2) A pilot subcarrier at 19,000 hertz (Hz) ±2 Hz shall be transmitted and shall frequency modulate the main carrier between the limits of 8 and 10%.

(3) The first quadraphonic subcarrier shall be the second harmonic of the pilot subcarrier and shall cross the time axis with a positive slope simultaneously with each crossing of the time axis by the pilot subcarrier.

(4) The second quadraphonic subcarrier shall have the same frequency as the first quadraphonic subcarrier and shall be advanced by 90° with respect to the first subcarrier, thereby reaching positive maxima whenever the pilot subcarrier crosses the time axis.

(5) Amplitude modulation of the quadraphonic subcarriers shall be used.

(6) The quadraphonic subcarriers shall be suppressed to a level less than 1.0% modulation of the main carrier.

(7) The quadraphonic subcarriers shall be capable of being modulated by audio frequencies from 50 to 15,000 Hz.

(8) The modulating signal for the first quadraphonic subcarrier shall be a signal which is the difference between the sum of the two left signals and the sum of the two right signals.

(9) The modulating signal for the second quadraphonic subcarrier shall be a signal which is the difference between the sum of the two front signals and the sum of the two back signals.

(10) The pre-emphasis characteristics of the modulation applied to the quadraphonic subcarriers shall be identical with those of the main channel with respect to phase and amplitude at all audio frequencies.

(11) The ratio of peak deviation resulting from the main channel audio signal and peak deviation resulting from sidebands of the first quadraphonic subcarrier when only identical steady state left front and left back (right front and right back) signals exist shall be within ± 3.5% of unity at all levels of these signals and at all frequencies from 50 to 15,000 Hz.

(12) The phase difference between the zero points of the main channel signal and the envelope of the first quadraphonic subcarrier sidebands, when only identical steady state left front and left back (right front and right back) signals exist shall not exceed ± 3° for audio modulating frequencies from 50 to 15,000 Hz.

(13) The ratio of peak deviation resulting from the main channel audio signal and peak deviation resulting from the sidebands of the second quadrophonic subcarrier when only identical steady state left front and right front (left back and right back) signals exist shall be within ± 3.5% of unity at all levels of these signals and at all frequencies from 50 Hz to 15,000 Hz.

(14) The phase difference between the zero points of the main channel signal and the envelope of the second quadraphonic subcarrier sidebands, when only identical steady state left front and right front (left back and right back) signals exist shall not exceed ± 3° for audio modulating frequencies from 50 to 15,000 Hz.

Note.—If the quadraphonic separation between the sum of identical signals in the left front and left back (right front and right back) (left front and right front) (left back and right back) channels and the sum of signals in the right front and right back (left front and left back) (left back and right back) (left front and right front) is better than 29.7 dB at audio frequencies between 50 and 15,000 Hz it will be assumed that paragraphs (11), (12), (13), and (14) of this Section have been complied with.

(15) The sum of the sidebands of the first quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 45% of total modulation (excluding SCA subcarriers) when only identical left front and left back (right front and right back) signals exist; simultaneously in the main channel the deviation when only identical left front and left back (right front and right back) signals exist shall not exceed 45 percent of total modulation (excluding SCA subcarriers).

(16) The sum of the sidebands of the second quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 45% of total modulation (excluding SCA subcarriers) when only identical left front and right front (left back and right back) signals exist; simultaneously in the main channel the deviation when only identical left front and right front (left back and right back) signal exist shall

not exceed 45% of total modulation (excluding SCA subcarriers).

(17) The sum of the sidebands of the first and second (quadrature) subcarriers shall not cause a peak deviation of the main FM carrier in excess of 52.72 percent of the total modulation (excluding SCA subcarriers) when only a Left Front (Left Back, Right Front, Right Back) signal exists; simultaneously in the main channel the peak deviation of the main FM carrier when only a Left Front (Left Back, Right Front, Right Back) signal exists shall not exceed 37.28 percent of the total modulation (excluding SCA subcarriers).

Note.—If the modulation percentages of paragraphs (15) and (16) have been met, it will be assumed that paragraph (17) of this Section has been complied with.

(18) The main channel signal shall not cause a peak deviation of the main carrier in excess of 90%.

(19) The sum of the sidebands of the first quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 90%.

(20) The sum of the sidebands of the second quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 90%.

(21) Crosstalk into the main channel caused by modulation of the first and/or second quadraphonic subcarriers shall be at least 40 dB below 90% modulation.

(22) Crosstalk into either first or second subcarrier caused by any signals in the main channel shall be at least 40 dB below 90% modulation.

(23) Crosstalk into the in-phase (0°) subcarrier from the quadrature (90 degree) subcarrier shall be at least 40 db below 90% modulation.

(24) Crosstalk into the quadrature (90°) subcarrier from the in-phase subcarrier shall be at least 40 db below 90% modulation.

(25) Total modulation of the main carrier including the pilot subcarrier and SCA subcarriers shall meet the requirements of §73.268 or §73.568 with maximum modulation of the main carrier by all SCA subcarriers below 75 kHz limited to 10% according to §73.319.

(26) For required transmitter performance all of the requirements of § 73.254 or § 73.554 shall apply with the exception that the maximum modulation to be employed is 90% (excluding pilot subcarriers) rather than 100%.

(27) For electrical performance standards of the transmitter and associated equipment, the requirements of §73.317 (a) (2), (3), (4), and (5) shall apply to the main channel and quadraphonic subchannels alike, except that where 100% modulation is referred to, this figure shall include the pilot subcarriers.

(b) Quadraphonic transmission using the main channel and three subcarriers shall be in accordance with the following standards (4–4–4 mode):

(1) All standards for quadraphonic transmission using the main channel and three subcarriers in accordance with §73.323 (a) (1) through §73.323 (a) (27), except (a) (17), shall apply.

(2) The third quadraphonic subcarrier shall be the fourth harmonic of the pilot subcarrier and shall cross the time axis with a positive slope sumultaneously with each crossing of the time axis by the pilot subcarrier.

(3) Amplitude modulation of the third quadraphonic subcarrier shall be used.

(4) The third quadraphonic subcarrier shall be suppressed to a level less than 1.0% modulation of the main carrier.

(5) The third quadraphonic subcarrier shall be capable of being modulated by audio fequencies from 50 to 15,000 Hz.

(6) The modulating signal for the third quadraphonic subcarrier shall be a signal which is the difference between the sum of the left front and right back signal and the sum of the left back and right front signal.

(7) The pre-emphasis characteristics of the modulation applied to the third quadraphonic subcarrier shall be identical with those of the main channel with respect to phase and amplitude at all audio frequencies.

(8) The ratio of peak deviation resulting from the main channel audio signal and peak deviation resulting from the sidebands of the third quadraphonic subcarrier when only identical steady state left front and right back (right front and left back) signals exist shall be within ±3.5% of unity at all levels of these signals and at all frequencies from 50 Hz to 15,000 Hz.

(9) The phase difference between the zero points of the main channel signal and the envelope of the third quadraphonic subcarrier sidebands, when only identical steady state left front and right back (right front and left back) signals exist shall not exceed ±3° for audio modulating frequencies from 50 to 15,000 Hz.

Note.—If the quadraphonic separation between the sum of the signals in the left front and right back (right front and left back) channels and the sum of signals in the right front and left back (left front and right back) is better than 29.7 dB at audio frequencies between 50 and 15,000 Hz it will be assumed that paragraphs (8) and (9) of this Section have been complied with.

(10) The sum of the sidebands of the third quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 45% of total modulation (excluding SCA subcarriers) when only identical left front and right back (left back and right front) signals exist; simultaneously in the main channel the deviation when only identical left front and right back (right front and left back) signals exist shall not exceed 45% of total modulation (excluding SCA subcarriers).

(11) The sum of the sidebands of the first and second (quadrature) subcarriers shall not cause a peak deviation of the main FM carrier in excess of 37.28% of the total modulation (excluding SCA subcarriers) when only a left front (left back, right front, right back) signal exists; simultaneously in the main channel the peak deviation of the main FM carrier when only a left front (left back, right front, right back) signal exists shall not exceed 26.36% of the total modulation (excluding SCA subcarriers); simultaneously the sum of the sidebands of the third subcarrier shall not cause a peak deviation of the main FM carrier in excess of 26.36% of the total modulation (excluding SCA subcarriers) when only a left front (left back, right front, right back) signal exists.

Note.—If the modulation percentages of Sections 73.323(a)(15) and (16) and 73.323(b)(10) have been met, it will be assumed that paragraph (11) of this Section has been complied with.

(12) The sum of the sidebands of the third quadraphonic subcarrier shall not cause a peak deviation of the main carrier in excess of 90%.

(13) Crosstalk into the main channel caused by modulation of any quadraphonic subcarrier shall be at least 40 dB below 90% modulation.

(14) Crosstalk into either first, second or third subcarrier caused by and signals in the main channel shall be at least 40 dB below 90% modulation.

(15) Crosstalk into any one of the three quadraphonic subcarriers caused by the modulation of any other of the quadraphonic subcarriers shall be at least 40 dB below 90% modulation.

(16) For required transmitter performance all of the requirements of § 73.254 shall apply with the exception that the maximum modulation to be employed is 90% (excluding pilot subcarriers) rather than 100%.

(17) For electrical performance standards of the transmitter and associated equipment, the requirements of § 73.317(a), (2), (3), (4), and (5) shall apply to the main channel and quadraphonic subchannels alike, except that where 100% modulation is referred to, this figure shall include the pilot subcarriers.

5. Section 73.597, headnote and text are amended to read as follows:

**§ 73.597 Stereophonic or quadraphonic broadcasting.**

(a) Noncommercial educational FM broadcast stations may, without further authority, transmit stereophonic or quadraphonic programs in accordance with the technical standards set forth in §§ 73.322 and 73.323 and upon installation of type accepted stereophonic or quadraphonic transmitting equipment and a type approved stereophonic or quadraphonic modulation monitor as appropriate. Prior to commencement of stereophonic or quadraphonic broadcasts, appropriate equipment performance measurements must be completed. Note that until such time as standards are established for type approval of quadraphonic modulation monitors and such monitors are available, a stereophonic modulation monitor is to be used.

(b) Each licensee or permittee engaging in stereophonic or quadraphonic broadcasting shall measure the pilot subcarrier frequency as often as necessary to ensure that it is kept at all times within 2 Hz of the authorized frequency. In any event, however, the pilot subcarrier frequency shall be measured in accordance with the following schedule:

(1) For stations authorized to operate with transmitter power in excess of 10 watts, the pilot subcarrier frequency shall be measured at least once each calendar month with not more than 40 days expiring between successive measurements.

(2) For stations authorized to operate with transmitter power of 10 watts or less, the pilot subcarrier frequency shall be measured:

(i) When the pilot subcarrier generator is initially installed;

(ii) At any time the frequency determining elements of the pilot subcarrier generator are changed;

(iii) At any time the licensee may have reason to believe the pilot subcarrier frequency is not within the frequency tolerance prescribed by the FCC's rules.

[FR Doc. 80-25246 Filed 8-19-80; 8:45 am]
BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 45, No. 163
Wednesday, August 20, 1980

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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Federal Administrative Law Judge Hearings—Statistical Report for 1976 to 1978

The Office of the Chairman of the Administrative Conference of the United States announces publication of a report: "Federal Administrative Law Judge Hearings—Statistical Report for 1976–1978." The report contains caseload statistics and data on closed cases for the 28 Federal agencies that employed administrative law judges in fiscal years 1976–1978. The statistics are annotated with citations to relevant statutes and regulations, and a chapter on the role of the administrative law judge is included.

The report is on sale through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock No. 052–049–00012–1) for $8.50.

The Office of the Chairman has a limited supply of copies for single copy distribution. To request a copy of the report, write to Administrative Conference of the U.S., Suite 500, 2120 L Street, NW., Washington, D.C. 20037, or telephone Sue Boley, Librarian, at 202–254–7020.

Richard K. Berg,
*Executive Secretary.*
August 12, 1980.

[FR Doc. 80-25298 Filed 8-19-80; 8:45 am]
BILLING CODE 6110-01-M

## CIVIL AERONAUTICS BOARD

**[Docket No. 37497; Order 80-8-75]**

### Intra-Alaska Service Mail Rates of Alaska Airlines, Inc.; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of August 1980.

By this order the Board proposes to establish new final service mail rates for the transportation of priority and nonpriority mail over the intra-Alaska routes of Alaska Airlines, Inc. on and after January 26, 1980.

Alaska petitioned the Board on January 23, 1980, to open its existing intra-Alaska service mail rates effective January 26, 1980, and to establish increased service mail rates per billed revenue ton-mile of $2.3628 for nonpriority mail and $2.5773 for priority mail. These rates would produce an estimated overall yield of $2.5191 per mail ton-mile and were based on operating data for the year ended September 30, 1979. Subsequently, on March 12, 1980, Alaska filed Amendment No. 1 to its petition containing revised economic justification and requested the Board to establish rates per billed ton-mile of $2.1045 for nonpriority mail and $2.2785 for priority mail resulting in an estimated overall yield of $2.2313 per mail ton-mile.

By letter dated January 31, 1980, the United States Postal Service requested that the date for submission of answers be extended until June 17, 1980, so that traffic density tests could be conducted in April. The request was granted.

The Postal Service filed its answer to Alaska's petition on June 13, 1980, setting forth the results of the density tests and proposing establishment of priority and nonpriority rates of $2.2835 and $2.0999 per billed great-circle ton-mile, respectively. Alaska authorized the Postal Service to state that it supports the rates and joins in the request of the Postal Service that these rates be established for Alaska's intra-Alaska service effective January 26, 1980. The Postal Service also requests that the order establishing the rates contain authority permitting Alaska to elect to transport mail between competitive points at a reduced rate equal to the rate then in effect for such service by any other carrier.

On Jule 18, 1980, Alaska filed a motion to file an otherwise unauthorized document endorsing the rates proposed by the Postal Service and requesting the Board to (1) take steps to finalize the new rates as quickly as possible in view of its weakened financial condition; (2) establish the new rates as final rates; and (3) provide for an automatic updating procedure to reflect subsequent cost changes.

Our review of the data submitted by the carrier in its petition, the Postal Service in its answer, and fuel data contained in C.A.B. Form 41 reports indicates that an increase in Alaska's intra-Alaska service mail rates is warranted. As discussed below, we are also adopting a procedure for updating the mail rates to reflect cost escalations and granting the Postal Service's request for a rate equalization provision. We tentatively find that the rates proposed by the Postal Service and agreed to be by Alaska fall within the zone of reasonableness and constitute fair and reasonable rates of compensation for Alaska's intra-Alaska mail services. Although the methodology used by the Postal Service to determine the rates varies slightly from the Board's usual methodology the resulting difference in *de minimis*. Consistent with past policy, we have given weight to the fact that both parties have agreed upon the rates. We also have taken into consideration the fact that Alaska is a subsidized carrier. Our analysis does not indicate that these rates will burden subsidy and, therefore, we can find no basis to declare the rates unreasonable.

In reaching this conclusion, we have confined our determination to the facts of this case and do not necessarily accept and/or completely agree with the methodology used by the Postal Service in arriving at these rates, nor do we intend that our determination in this instance be construed as a precedent for use of its slightly different methodology. Based on mail volumes for the year ended September 30, 1979, the proposed rates will result in an annual increase in Alaska's mail revenues of approximately $442,000 or about 70 percent. Alaska's current rates have been in effect since January 1, 1975.

Based on the foregoing, the Board tentatively finds and concludes that:

1. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of Section 406 of the Federal Aviation Act of 1958, as amended, on and after January 26, 1980, to Alaska Airlines, Inc. for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith, shall be $2.2835 per great-circle ton-mile for

priority mail and $2.0999 per great-circle ton-mile for nonpriority mail;

2. Alaska, by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers.

(a) An original and three copies of each notice of election and agreement shall be filed with the Board and a copy thereof shall be served upon the Postmaster General and each carrier providing service between the stated points. Such notice shall contain a complete description of the reduced charge being established, the routing over which it applies, how it is constructed and shall similarly describe the charge with which it is being equalized.

(b) Any rate established shall be effective for the electing carrier or carriers on the date of filing of the notice, or such later date as may be specified in the notice, until such election is terminated. Elections may be terminated by any electing carrier upon ten days notice filed with the Board and served upon the Postmaster General and each carrier providing service between the stated points.

3. The rates here established shall be adjusted semi-annually based on an update methodology similar to procedures established in the *Priority and Nonpriority Domestic Service Mail Rates Investigation*, Docket 23080-2 and the *Transatlantic, Transpacific and Latin American Service Mail Rates Investigation*, Docket 26487. See Orders 79-7-16 and 79-7-17, July 3, 1979.

Final future rates will be established every six months based on the latest available four-quarter Form 41 data projected forward to the midpoint of the prospective rate period. Thus, final mail rates for the period January 1, 1981, through June 30, 1981, will reflect the application of a cost escalation factor to the base period costs for intra-Alaska mail service. The cost escalation factor will be based on a comparison of FY 1979 costs with base period costs plus a factor for anticipatory costs through March 31, 1981, the midpoint of the period. The factor for anticipatory costs will assume a rate of change equal to the rate of change experienced from the base period to FY 1979. Unit costs will be determined by dividing total costs, excluding passenger and transport related items, by available ton-miles.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly Sections 204(a), and 406, and the Board's Procedural Regulations promulgated in 14 CFR Part 302,

1. We grant the motion of Alaska Airlines, Inc. to file an otherwise unauthorized document.

2. We direct all interested persons, particularly Alaska Airlines, Inc. and the Postmaster General, to show cause why the Board should not adopt the foregoing findings and conclusions, and fix, determine and publish those rates to be effective as specified above.

3. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of this order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

4. If no notice is filed, or, if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem all further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix.

5. We shall serve this order on the Postmaster General and Alaska Airlines, Inc.

We shall pubish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[1]

*Secretary.*

APPENDIX.—*Alaska Airlines, Inc. Summary of Costs Assigned To Mail Intra-Alaska Services*

[Year Ended Sept. 30, 1979]

| | Priority mail | Nonpriority mail | Total |
|---|---|---|---|
| Total operating costs | $742,703 | $247,758 | $990,461 |
| Return and tax markup | 59,306 | 19,784 | 79,090 |
| Total economic costs | $802,009 | $267,542 | $1,069,551 |
| Billed ton-miles | 351,212 | 127,406 | 478,618 |
| Service mail rate per billed ton-mile | $2.2835 | $2.0999 | $2.2347 |

Source: Postal Service Attachment I.

[FR Doc. 80-25344 Filed 8-19-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 36595]

## Competitive Marketing of Air Transportation; Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge William H. Dapper to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to Judge Yoder.

Dated at Washington, D.C., August 15, 1980.

Joseph J. Saunders,

*Chief Administrative Law Judge.*

[FR Doc. 80-25343 Filed 8-19-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket Nos. 38332, 38596]

## Marco Island Airways, Inc.; Fitness Investigation and Order To Show Cause

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order to Show Cause, Docket 38332 and Fitness Investigation of Marco Island Airways, Inc. (Docket 38596).

**SUMMARY:** The Board is issuing an order in which it tentatively finds and concludes that it is consistent with the public convenience and necessity to grant the application of Marco Island Airways, Inc., for a certificate authorizing the air transportation of persons, property and mail between the terminal point Miami, Florida and the terminal point Marco Island, Florida. Certification is subject to a favorable determination of the applicant's fitness in the Marco Island Airways, Inc., Fitness Investigation (Docket 38596), instituted concurrently.

**DATES:** All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by September 17, 1980, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

**ADDRESSES:** Objections to issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 38332, application of Marco Island Airways for a certificate of public convenience and necessity. In addition, copies of such filings should be served on Marco Island Airways, the Department of Transportation of the State of Florida, the Mayors of Miami and Marco Island, Florida, the Managers of Miami International Airport and Marco Island Airport and the Governor of Florida.

**FOR FURTHER INFORMATION CONTACT:** Lawrence R. Intravia, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-6068.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 80-8-79 is

[1] All Members concurred.

available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80-8-79 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 14, 1980.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 80-25345 Filed 8-19-80; 8:45 am]

BILLING CODE 6320-01-M

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[Docket Nos. 33361, 38495]

### Former Large Irregular Air Service Investigation and Universal Airlines, Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference will be convened in the above-entitled matter on August 27, 1980, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C., with the undersigned presiding.

The Bureau of Domestic Aviation and the Bureau of Consumer Protection (the Bureaus), will serve on all parties on or before August 21, 1980, a statement of proposed issues, proposed stipulations, requests for information, and proposed procedural dates. The other parties to this proceeding will serve on each other and the Bureaus on or before August 26, 1980, a proposed statement of issues, proposed stipulations, requests for information, and proposed procedural dates, provided that the submissions of other parties are to be restricted to matters upon which they differ with the Bureaus' proposals. The parties are directed to adopt the Bureaus' lettering and numbering format to facilitate cross-referencing. Six copies of all submissions will be served on the administrative law judge promptly.

Dated at Washington, D.C., August 15, 1980.

Alexander N. Argerakis,

*Administrative Law Judge.*

[FR Doc. 80-25342 Filed 8-19-80; 8:45 am]

BILLING CODE 6320-01-M

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## CIVIL RIGHTS COMMISSION

### Michigan Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Michigan Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end at 5:00 p.m., on September 4, 1980, and will convene at 9:30 a.m. and will end at 5:00 p.m., on September 5, 1980 at the PVM Building, 477 Michigan Avenue, Room 895, Detroit, Michigan 48226.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is planning for Loan Equality, Education and Criminal Justice Projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 15, 1980.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 80-25319 Filed 8-19-80; 8:45 am]

BILLING CODE 6335-01-M

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### North Dakota Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 8:30 a.m. and will end at 9:00 p.m., on September 19, 1980 and will convene at 8:30 a.m. and will end at 3:00 p.m. on September 20, 1980, at the Kirkwood Motor Inn, Bavarian Hall, 800 S. Third Street, Bismarck, North Dakota 58501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to receive testimony on fair housing in Bismarck, North Dakota.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 14, 1980.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 80-25320 Filed 8-19-80; 8:45 am]

BILLING CODE 6335-01-M

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### North Dakota Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission originally scheduled for August 25, 1980, at Bismarck, North Dakota, (FR Doc. 80-24449 on page 53852, August 13, 1980) has been changed.

The meeting now will be held on August 20, 1980, beginning at 1:00 p.m. and will end at 3:00 p.m., at the Dakota Association of Native Americans, 2900 Broadway, Bismarck, North Dakota 58501.

Dated at Washington, D.C., August 14, 1980.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 80-25321 filed 8-19-80; 8:45 a.m.]

BILLING CODE 6335-01-M

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Countervailing Duties—Certain Iron-Metal Castings From India; Final Countervailing Duty Determination

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Final countervailing duty determination.

**SUMMARY:** This notice is to advise the public that the Department of Commerce has determined that the Government of India confers benefits upon the production or export of certain iron-metal castings which constitute subsidies within the meaning of the countervailing duty law. This case has been referred to the International Trade Commission for a determination regarding injury.

**EFFECTIVE DATES:** August 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Steven Morrison, Program Analyst, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-3965).

**SUPPLEMENTARY INFORMATION:**

Background

On February 19, 1980, the Department of Commerce received a petition in satisfactory form from James Pinkerton, Jr. and Pinkerton Foundry, Inc., on behalf of Domestic manufactures of iron-metal castings, alleging that bounties or grants (subsidies) are being provided on the manufacture, production, or exportation of certain iron-metal castings from India. A "Notice of Initiation of Countervailing Duty Investigation" was published in the Federal Register on March 14, 1980 (45 FR 16521). A notice of "Preliminary

Countervailing Duty Determination" was published in the Federal Register on May 23, 1980 (45 FR 34945). The Department has afforded interested parties an opportunity to present oral views in accordance with § 355.35, Commerce Regulations (19 CFR 355.35, 45 FR 4946). In addition, written views and oral views have been received in accordance with § 355.34(a), Commerce Regulations (19 CFR 355.34(a), 45 FR 4946).

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150) (the TAA) took effect. The TAA superseded section 303 of the Tariff Act of 1930 (the Act) for countervailing duty cases involving products of any country determined to be a "country under the Agreement" as defined in section 701(b) of the Act (19 Stat. 151, 19 U.S.C. 171(b)). The TAA also amended section 303 of the Act (19 U.S.C. 1303).

India is not presently a "country under the Agreement". This case is, therefore, governed by section 303 of the Act, as amended by section 103(b) of the TAA (19 Stat. 190, 19 U.S.C. 1303(b)). Cases under section 303 generally do not include an injury determination by the International Trade Commission. The only exception is merchandise that is not subject to normal Customs duties. Because iron-metal castings are not dutiable, this case will be referred to the Commission for a final determination of whether there is material injury to an industry in the United States by reason of the subsidized merchandise.

The iron-metal castings covered by this determination consist of manhole covers and frames, clean-out covers and frames and catch basin grates and frames which enter the United States under item number 657.09 of the Tariff Schedules of the United States (TSUS).

## Nature of Industry

The Indian iron-metal castings industry is composed of "small scale" manufacturers with a captial investment of $125,000 or less. Iron-metal castings production is labor intensive. The materials used are supplied locally (i.e., are not imported).

All exporters of castings are required to belong to the Engineering Export Promotion Council (EEPC). Many of the manufacturers also belong to the Trade Development Authority (TDA). Both of these organizations assist in export promotion.

## Programs Investigated

The petitioner has alleged that Indian exports of castings to the United States receive a variety of subsidies, most of which are direct export subsidies. The issues raised, and the reasons for our decision, are substantially similar to those dealt within our final determination, published in the Federal Register on July 21, 1980, in the case of Certain Industrial Fasteners from India (45 FR 48607).

As in the fasteners case, the major program involved is a system of cash compensatory supports for exports. Representatives of the Indian exporters and the Indian Government have argued that this program should be considered a rebate of indirect taxes which are not otherwise rebated to exporters and, therefore, payments made under it should not be considered subsidies. The other programs investigated are, in terms of benefit to the exporter, far less significant.

## Programs Found to be Subsidies

Of the programs investigated, we have determined that the following constitute subsidies within the meaning of the countervailing duty law:

1. *Cash Compensatory Support on Export (CCS)*—The CCS program was introduced in 1966 and, since then, has been revised periodically. The Government of India has stated that the primary—but not the exclusive—purpose of the CCS program is to compensate exporters for various indirect taxes paid, and not otherwise rebated, on products that are exported. CCS payments are designed to support exports in a manner consistent with the competitive needs of Indian producers.

The CCS rate various depending upon the product exported. It is determined after taking into account the incidence of indirect taxes paid by producers of a particular product and not otherwise refunded, the existence of other disincentives to exports, and the competitive needs of the producers. There is no "right" to CCS payments; none are granted even where there are indirect taxes not otherwise rebated if the Government of India decides that the competitive need of a particular industry does not warrant CCS payments.

In the case of iron-metal castings exported to North America, the CCS rate was established, effective April 1, 1979, at 12.5% of the f.o.b. value of the merchandise exported. In October 1978 the Ministry of Commerce requested all Export Promotion Councils, including the EEPC (which represents the castings industry), to submit updated information on the indirect taxes levied on castings, and other matters affecting this export.

The Ministry stated that such information was needed to determine revised CCS payment levels. The CCS rate was established after the data submitted by the manufacturers and exporters of castings had been reviewed.

As we stated in our decision in the fastener case, the primary considerations in determining whether programs like the CCS program should be considered indirect tax rebates are (1) whether the program operates for the purpose of rebating indirect taxes; (2) whether there is a clear link between eligibility for payments on export and indirect taxes paid; and (3) whether the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the amount paid on export.

In the fasteners case, a number of points were raised concerning the general structure of the CCS program (e.g., CCS payments were not made by the taxing authorities; industries do not have a right to CCS payments). However, our decision turned not on such general considerations but on specific analysis of the relationship between the level of CCS payments for fasteners exports and the incidence of indirect taxes borne by these exports. Our decision in this case also rests on specific analysis of the indirect tax/CCS payments relationship for the product involved. Several characteristics of this relationship convince us that the standards presented above have not been satisfied in this case.

We reviewed data on the actual indirect taxes paid by iron-metal castings producers that export to the United States and provided the Indian Government with information for purposes of fixing the level of CCS payments. In most cases total indirect taxes paid were considerably less than 12.5% of the value of the merchandise. Moreover, these tax calculations included several payments (i.e., a steel development surcharge, payments to an engineering goods export assistance fund, port congestion charges, and taxes on electricity and fuel) which we would *not* consider indirect taxes which may be rebated on export.

In addition to the difference in incidence of indirect taxes and the level of CCS payments, the manner in which the information on the tax levels was submitted to the Government of India and relied on raises, of itself, certain problems. The Commerce Ministry required the Export Promotion Council governing the castings sector to submit information relating to its indirect tax burden. Some individual company experiences were provided to the Ministry, but apparently without an appropriate aggregation showing the weighted average tax incidence for the

sector as a whole. In order to satisfy the question of whether export payments are made to remit indirect taxes, we require evidence demonstrating that the tax incidence of any given product sector has been determined quite precisely. In this case, there is no such satisfactory evidence. Counsel for the EEPC himself pointed out that calculations of indirect taxes paid by producers of castings varied from 4% to 13.6%. In the absence of evidence showing the average tax incidence on all the products at issue to have been near the high end of this range, counsel's characterization of this 12.5% figure as a "middle ground" is unconvincing.

Thus, the evidence in this case includes neither a satisfactory demonstration of the requisite linkage between the indirect tax incidence and the level of CCS payments, nor a showing that the actual indirect tax incidence has been reasonably calculated and documented. The CCS program, as applied to exports of iron-metal castings, does not appear to involve indirect tax rebates as much as it does a general export payment which, while undoubtedly compensating in some measure for indirect taxes not otherwise rebated, goes well beyond this purpose.

We have therefore concluded that, in this case, the CCS payments must be considered a subsidy program and have found the amount of subsidy to be 12.5% of the f.o.b. value of the exported merchandise.

Counsel representing Indian manufacturers of iron-metal castings has argued that, in the event we find that the CCS program as applied to exports of castings constitutes a subsidy, the amount of the subsidy should be offest by an export inspection fee in the amount of 1% of the value of the exported merchandise, which all castings exporters must pay. We have decided that such an offset would be inappropriate.

Counsel maintains that the export inspection fee should be considered "an application fee * * * paid in order to qualify for * * * the benefit of the subsidy" and, therefore, an allowable offset under section 771(b)(A) of the Act. However, it does not appear that the inspection fee is related to application for CCS payments. Export inspection, and payment of export inspection fees, are required for certain engineering product exports, whether or not the exports benefit from CCS payments. The inspection is meant to be a service that benefits the exporter by ensuring quality control over exports. The fee is payment for the service provided, not for CCS application.

Counsel has also argued that the benefit conferred by CCS payments should be calculated on an after tax basis—i.e., should be reduced by the "approximately 60% income tax rate" paid by "most casting firms". We have not accepted this argument.

The information we have received provides no basis for accurate calculation of extent to which CCS payments are taxed. The tax rate may vary from producer to producer. Moreover, the extent to which the payments are taxed will depend upon the extent to which the exporter has net income, after deductible expenses.

Because we have not been given a basis upon which accurately to gauge the real impact of taxation of CCS payments, we need not reach the underlying legal question of whether the limitations in the countervailing duty law prevent calculating the subsidy on an after tax basis. However, in facing this issue we would have to begin from the demonstrable intent of Congress to restrict offsets severely.

2. *Preferential Export Financing*—Packing credit loans are available to exporters of castings. These loans have a sliding scale interest rate which varies with the elapsed time that the loan is outstanding. The interest rate ranges from 11% for the first 90 days, 13% for the next 45 days and thereafter at negotiated commercial rates. Commercial credit is generally available to manufacturers and traders from rates of 13.5% to 15%.

The Government of India (through the Reserve Bank of India) apparently underwrites the lower interest rate of the packing credit loans by paying the lending bank an additional 1.5% interest rate without any charge to the exporter. There is a direct transfer of funds to support the loan from the Central Bank to the lending bank. Accordingly, we have found that packing credit loans involve a subsidy of 0.4% of the f.o.b. value of the exported merchandise.

3. *Tax Deductions*—The GOI has a program which allows for a special income tax deduction for export market development.

The Export Markets Development Allowance provides for a tax deduction of 133% of certain specific expenses. These include expenses incurred both before and after sale, although commissions normally are not an allowable deduction unless they are tied to other specific expenses. The claims made by the manufacturers for this special deduction normally exceed the amount eventually allowed for deduction by the tax authorities, if and when the tax returns of the companies are audited, sometimes by a substantial amount. Final settlement of the tax returns normally takes two to three years.

Because the kind of expenses allowed under the special deduction would be deductible in full if incurred in non-export business activities, the benefit to the manufacturers is limited to 33 percent of the allowed amount applied to the corporate tax rate. On this basis, we have determined that exporters of castings receive a subsidy in the following amounts:

| | Percent of f.o.b. value |
|---|---|
| Uma Iron & Steel | 3.6 |
| RB Agarwalla | 2.0 |
| Basant Udyog | 0.9 |
| Kenjiwal Iron & Steel | 0.2 |
| Kajaria Exports | 0.0 |
| All Others | 0.4 |

4. *Market Development Assistance*—Under the Market Development Assistance program, grants have been provided for export promotion to the Engineering Export Promotion Council (EEPC) and the Trade Development Authority (TDA). These grants have been used by the EEPC and the TDA to operate overseas offices and organize exhibits designed to promote Indian exports generally. Firms which belong to these organizations pay dues which exceed any specific benefits they derive from EEPC and TDA activities. In addition, the firms are billed for all special services such as participation in trade shows, listing in directories, etc. We have, accordingly, decided that such market development assistance does not amount to a subsidy under the countervailing duty law.

However, apart from these services, special grants for export market study teams to travel to and sell in the United States were provided for the benefit of Uma Iron & Steel and Kajaria Exports. We have determined that such grants are subsidies. The benefit to Kajaria was de minimis (0.0001%). The grant to Uma Iron and Steel amounted to 0.3% of its f.o.b. export sales.

**Programs Not Used**

1. *Import Permits*—The Government of India provides import permits to manufacturers which export in order to allow them to replenish their stocks of imported inputs. The import permits are negotiable and therefore can have a market value. However, since manufacturers of castings use local materials, they receive no import permits and there is no question of possible subsidization.

2. *Kandla Free Trade Zone*—The petition alleged that benefits were received by manufacturers or exporters of castings based on their location within the Kandla Free Trade Zone. No castings manufacturer is located within the zone nor are castings exported to the U.S. from the zone. Thus, there is no question of any benefit that would constitute a subsidy within the meaning of the countervailing duty law.

3. *Post-Shipment Export Financing*—Documents were provided by the Reserve Bank of India which listed the categories of manufacturers eligible and those ineligible for post shipment financing. Castings manufacturers are listed as ineligible. Thus, no benefit has been conferred on castings manufacturers by this program.

4. *Subsidized Freight Rates*—The GOI submitted information indicating that a program to provide preferential freight rates for exports is no longer in effect.

Programs Found Not To Be Subsidies

1. *Tax Deductions for Capital Equipment and New Industrial Undertakings*—The Government of India allows income tax deductions for purchases of new capital equipment and establishment of new industrial enterprises. We have found that these deductions are generally available (i.e., they are not industry or enterprise specific) and therefore have concluded that they are not subsidies within the meaning of the countervailing duty law.

2. *Refund of Excise Taxes*—Under a "duty drawback" program, excise taxes collected under the Excise and Salt Tax Act on the sale of pig iron and scrap iron are refunded when products incorporating the iron ore are exported. The nonexcessive rebate of excise taxes is not a subsidy within the meating of the countervailing duty law. Pig iron and scrap iron is subject to an excise tax of 73.50 rupees per ton; it is rebated on export at a rate of 73.00 rupees per ton. Accordingly we find that there is no subsidy involved.

3. *Export Credit Insurance*—Petitioner has alleged that castings manufacturers and exporters receive preferential export insurance rates. Export Credit Guarantee Corporation (ECGC) is chartered by the GOI to insure export transactions against default. However, the ECGC does not receive funds from the GOI. It is a commerical entity which charges rates sufficient to cover its operating expenses and to provide profit. Accordingly we have determined that ECGC insurance does not amount to a subsidy.

Verification

The information relied upon in reaching this determination has been verified by Department officials through investigation of government documents, discussions with GOI, trade organization, and corporate officials, and corporate books and records.

Examples of the type of documents examined include official government reports and policies, announcements of government programs, letters from banks ledger sheets, and income tax reports.

Determination

I hereby determine that the Government of India provides bounties or grants (subsidies) within the meaning of section 303 of the Act and that the estimated aggregate net amount of these benefits equals the amount indicated in the table below.

Effective on August 20, 1980, and until further notice, deposit of estimated countervailing duties, bond or other security shall be required at the time of entry, or withdrawal from warehouse, for consumption. The amount to be deposited is the amount specified in the table below. Entry documents should state the manufacturer of the merchandise, as well as the identity of the exporter. If the shipper is not the manufacturer of specific merchandise, the higher of the indicated rates will be applicable.

| | Percent of f.o.b. price |
|---|---|
| Uma Iron & Steel | 16.8 |
| R.B. Agarwalla & Co | 14.9 |
| Basant Udyog | 13.8 |
| Kejriwal Iron & Steel Works | 13.1 |
| Kanjaria Exports | 12.9 |
| All Other Companies | 13.3 |

This notice is published pursuant to section 303 and 706 of the Act (19 U.S.C. 1303, 1671(e), and § 355.36 of the Department of Commerce Regulations (19 CFR 355.36).

Robert E. Herzstein,

*Under Secretary for International Trade.*

[FR Doc. 80-25285 Filed 8-19-80; 8:45 am]

BILLING CODE 3510-25-M

## National Technical Information Service

### Marion Scientific; Intent To Grant Limited Exclusive Patent License

Notice is hereby given that the National Techincal Information Service (NTIS), U.S. Department of Commerce, proposes to grant to Marion Scientific, a division of Marion Laboratories, Kansas City, Missouri 64114, a limited exclusive right in the United States for the manufacture, use and worldwide sale of the products embodied in an invention on "Fecalator, an Apparatus and Method for Concentration of Parasite Eggs and Larvae," protected by U.S. Patent No. 4,061,356 (dated March 28, 1978).

This patent has been assigned to the United States of America, as represented by the Secretary of Health and Human Services. Custody of the right to license this invention has been transferred to the Secretary of Commerce.

Copies of the patent may be purchased from the Patent and Trademark Office, Washington, D.C. 20231, at a cost of fifty cents per copy.

Public announcements of the availability of this invention for licensing were published in the Federal Register on November 15, 1978 (43 FR 53056); in the NTIS publication *Government Inventions for Licensing* on November 14, 1978; and in the *Official Gazette* of the Patent and Trademark Office on December 12, 1978. To date, these and other promotional efforts have not resulted in any applications for, or the granting of, nonexclusive licenses under this patent. The Director of NTIS has therefore determined, in accordance with 41 CFR 101–4.103–3, that this invention is available for licensing on a limiting exclusive basis.

The limited exclusive license proposed to be granted will be a royalty-bearing license for a term of five years from the effective date of the license agreement. The license will be revocable in accordance with 41 CFR 101–4.104.5.

The proposed license will be subject to an irrevocable, nonexclusive, nontransferable, royalty-free right in the U.S. Government to make, use or sell the licensed invention throughout the world by or through contract on behalf of the U.S. Government or any foreign government pursuant to a treaty or agreement with the United States.

The proposed license will be granted by NTIS to Marion Scientific unless, on or before October 20, 1980, NTIS receives (1) an application for a nonexclusive license from a responsible U.S. applicant intending to practice the invention identified herein in the United States and NTIS determines that such applicant is likely to bring the invention to the point of practical application within a reasonable period of time under a nonexclusive license; or (2) written evidence and argument which establishes that it would not be in the public interest to grant the proposed

limited exclusive license to Marion Scientific.

Written data, inquiries, comments and objections relating to this proposed limited exclusive license should be submitted to the Office of Government Inventions and Patents, National Technical Information Service, Springfield, VA 22161. NTIS shall maintain and make available for public inspection a record of all decisions made in this matter and the basis therefor. This record shall contain copies of all written data, inquiries, comments and objections received by NTIS and pertaining to the proposed limited exclusive license.

Dated: August 8, 1980.

Melvin S. Day,

*Director, National Technical Information Service.*

[FR Doc. 80-25338 Filed 8-19-80; 8:45 am]

BILLING CODE 3510-04-M

## DEPARTMENT OF DEFENSE

### Defense Nuclear Agency

### Privacy Act of 1974; Deletions and Amendments of Systems of Records

**AGENCY:** Defense Nuclear Agency.

**ACTION:** Notice of deletions and amendments to systems of records.

**SUMMARY:** The Defense Nuclear Agency proposes to delete four and amend two systems of records in its inventory of records subject to the Privacy Act of 1974. The deletions are listed by system number and name with the reason for deletions following. The specific changes to the systems being amended are set forth followed by each system published in its entirety as amended.

**DATES:** Proposed actions shall be effective September 19, 1980, unless public comments result in a contrary determination requiring republication for further comments.

**ADDRESS:** Any public comments, including written data, views or arguments concerning the proposed actions should be addressed to the System Manager identified in the particular record system concerned.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brittigan, General Counsel, Defense Nuclear Agency, Washington, D.C. 20305, Telephone: 202-325-7681.

**SUPPLEMENTARY INFORMATION:** The Defense Nuclear Agency record system 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 (42FR51073), September 28, 1977

FR Doc 78-25819 (43FR42472), September 20, 1978

FR Doc 79-37052 (44FR74431), December 17, 1979

The proposed actions are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of a new or altered system report.

M. S. Healy,

*OSD Federal Register Liaison Officer, Washington Headquarters Services.*

August 13, 1980.

*Deletions*

**HDNA 004**

**SYSTEM NAME:**

Training and Employee Development Record Systems (44 FR 74434) December 17, 1979.

**HDNA 102-03**

**SYSTEM NAME:**

Headquarters Personnel Roster (44 FR 74435) December 17, 1979.

**HDNAAFRRI 1102-03**

**SYSTEM NAME:**

AFRRI Personnel Roster (44 FR 74437) December 17, 1979.

**HDNAFCPD41**

**SYSTEM NAME:**

FCDNA Personnel Data Systems (44 FR 74438) December 17, 1979.

Reason for deletions: These four systems have been combined into HDNA 005 (44 FR 74438) December 17, 1979

*Amendments*

**HDNA 001**

**SYSTEM NAME:**

Employee Assistance Program Case Record Systems (44 FR 74432) December 17, 1979

*Changes:*

**SYSTEM LOCATION:**

Delete: "Civilian Personnel Office, Defense Nuclear Agency, Washington, D.C. 20305, Routing Symbol: PACV."

Insert: "Occupational Health Unit, Biomedical Effects Office, Defense Nuclear Agency, Washington, D.C. 20305."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete: "Civilian Personnel Officer."

Insert: "Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office."

**NOTIFICATION PROCEDURE:**

Delete: "Civilian Personnel Officer."

Insert: "Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office."

Delete: Telephone Number 202-325-7592

Insert: 202-325-7073

**HDNA 609-03**

**SYSTEM NAME:**

Personnel Exposed to Radiation from Atmospheric Nuclear Tests (44 FR 74437) December 17, 1979.

*Changes:*

**SYSTEM LOCATION:**

Delete: "Headquarters, Defense Nuclear Agency, Washington, D.C. 20305 main computer location."

Insert: "Biomedical Effects Office, Defense Nuclear Agency, Washington, D.C. 20305."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete current listing.

Insert: "Assistant to the Director (Biomedical Effects), Defense Nuclear Agency, Washington, D.C. 20305."

**HDNA 001**

**SYSTEM NAME:**

DNA001 Employee Assistance Program Case Record Systems

**SYSTEM LOCATION:**

Biomedical Effects Office, Occupational Health Unit, Defense Nuclear Agency, Washington, DC 20305. Also at the following subordinate commands: Civilian Personnel Office, Bldg. 2023A, Kirkland AFB, New Mexico, 87115, and Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Bldg 42, located on the grounds of the National Naval Medical Center.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices and consist of information on condition, curent status, and progress of employees or dependents who have alcohol, drug, emotional, or other job performance problems.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Drug Abuse Office and Treatment Act of 1972, as amended by Public Law 93-282 (21 USC 1175); Comprehensive

Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Public Law 93-282 (42 USC 4582); Subchapter A of Chapter I, Title 42, Code of Federal Regulatons; Chapter 43 of Title 5, USC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the counselor in the execution of the counseling function as it applies to the individual employee. With specific written authority of the employee selected informaion may be provided to and used by other counselors or medical personnel research personnel, employers, representatives such as legal counsel, and to other agencies or individuals when disclosure is to the employee's benefit, such as for processing retirement applications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are purged of identifying information within five years after termination of counseling or destroyed when they are no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305, for Headquarters Defense Nuclear Agency: Chief, Civilian Personnel, Armed Forces Radiobiolody Research Institute, Bethesda, Maryland, 20014, for Armed Forces Radiobiology Research Institute; Civilian Personnel Officer, Kirtland AFB, New Mexico, 87115, for Field Command, Defense Nuclear Agency.

NOTIFICATION PROCEDURE:

Information may be obtained from: Occupational Health Nurse, Occupational Health Unit, Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305, Telephone: Area Code 202-325-7073 for Headquarters, Defense Nuclear Agency; Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, Maryland, 20014, Telephone: Area Code 301-295-1047, for Armed Forces Radiobiology Research Institute; or Civilian Personnel Officer, Bldg. 2023A, Kirtland AFB, New Mexico, 87115, Telephone: Area Code 505-264-9253, for Field Command, Defense Nuclear Agency. The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Counselors, other officials, individuals or practitioners, and other agencies both in and outside of Government.

SYSTEMS EXCEPTED FROM CERTAIN PROVISION OF THE ACT:

None.

HDNA 609-03

SYSTEM NAME:

Personnel Exposed to Radiation from Atmospheric Nuclear Tests.

SYSTEM LOCATION:

Biomedical Effects Office, Defense Nuclear Agency, Washington, DC 20305.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD and DoD affiliated personnel military and civilian, who participated in the United States Government atmospheric nuclear test programs in the Pacific and at the Nevada Test Site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information consisting of name, rank, service number, social security number, last known or current address, dates of test participation, exposure data, and unit of assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, 42 U.S.C. 2013 and Tasking Memorandum from Office of the Secretary of Defense to the Director, Defense Nuclear Agency dated 28 Jan 78, Subject: 'DoD Personnel Participation in Atmospheric Nuclear Weapons Testing'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Defense Components—For the purpose of preparing histories of atmospheric nuclear test participation and for use in litigation between test participants or their representatives and the Department of Defense.

Defense Nuclear Agency Contractors—For the purpose of assisting DoD components in preparation of histories of atmospheric nuclear test participation and responding to the inquiries and concerns of individuals who may have participated in the test programs and/or their representatives.

National Research Council and the Center for Disease Control—For the limited purpose of conducting epidemiological studies of the effects of ionizing radiation from the atmospheric nuclear weapons test on DoD participants in those tests.

Department of Energy—For the limited purpose of identifying AEC and AEC-contractor Personnel exposed to ionizing radiation during nuclear testing: and for conducting epidemiological studies of radiation effects of individuals so identified; and for use in litigation between the DoD and any of the individuals so identified.

Department of Transportation—For the limited purpose of identifying DOT and DOT-affiliated personnel exposed to ionizing radiation during nuclear testing and for use in litigation between the DOT and any of the individuals so identified.

Veterans Administration—For use in litigation between the VA and individuals and/or their representatives who are alleging service-connected disabilities as a result of said exposure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer magnetic tape disks and printouts in secure computer facility.

RETRIEVABILITY:

Paper records in file folders; computer magnetic tape disks and printouts in secure computer facility.

SAFEGUARDS:

Paper records are filed in folders stored in locked security safes. Mag tapes stored in vault in the computer area.

RETENTION AND DISPOSAL:

Paper records are retained until information is transferred to magnetic

tapes, then destroyed. Magnetic-tapes and disks are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Director, Biomedical Effects, Defense Nuclear Agency, Washington, DC 20305

NOTIFICATION PROCEDURE:

Information may be obtained from the SYSMANAGER.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

RECORD SOURCE CATEGORIES:

From DNA Form 10, searches of DoD records by other DoD components, and from individuals voluntarily contacting DNA by phone or mail.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-25327 Filed 8-19-80; 8:45 am]
BILLING CODE 3810-70-M

## National Security Agency/Central Security Service

## Privacy Act of 1974; Amendments to Systems of Records

**AGENCY:** National Security Agency/Central Security Service.

**ACTION:** Notification of amendment to systems of records.

**SUMMARY:** The National Security Agency/Central Security Service proposes to amend nine systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). The specific changes to each system being amended is set forth, followed by a publication of each system in its entirety as amended.

**DATES:** The proposed amendments shall be effective September 19, 1980, unless contrary public comment result in a contrary determination requiring republication for further comment.

**ADDRESS:** Any public comment, including written data, views or arguments concerning the proposed actions should be addressed to the Systems Manager in the particular record system concerned.

**FOR FURTHER INFORMATION CONTACT:** Daniel C. Schwartz, General Counsel, National Security Agency, Room 9A178, Fort George C. Meade, MD 20755.

**SUPPLEMENTARY INFORMATION:** The National Security Agency record system 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:

The proposed amendments are not within the purview of 5 U.S.C. 552a(o) which requires submission of a new or altered systems notice.

M. S. Healy,
*OSD Federal Register Liaison Officer, Washington Headquarters Services.*
August 13, 1980.

*Amendments*

**GNSA 01**

SYSTEM NAME:

NSA/CSS Access, Authority and Release of Information File.

*Changes*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "Executive Order 11652" and insert "Executive Order 12065".

NOTIFICATION PROCEDURE:

Change "Information Officer" to read "Chief, Office of Policy".

RECORDS ACCESS PROCEDURES:

Change "Information Officer" to read "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to read "Chief, Office of Policy".

**GNSA 02**

SYSTEM NAME:

NSA/CSS Applicants

*Changes*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "Civil Service Commission" to "Office of Personnel Management".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Change "Civil Service Commission" to "Office of Personnel Management".

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

**GNSA 03**

SYSTEM NAME:

NSA/CSS Correspondence, Cases, Complaints, Visitors, Request

*Changes*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "Executive Order 11652" to "Executive Order 12065".

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Change "Civil Service Commission" to "Office of Personnel Management".

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

**GNSA 04**

SYSTEM NAME:

NSA/CSS Cryptologic Reserve Mobilization Designee List

*Changes*

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORDS ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

**GNSA 05**

SYSTEM NAME:

NSA/CSS Equal Opportunity Data

*Changes*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Change "Civil Service Commission" to "Office of Personnel Management".

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

**GNSA 06**

SYSTEM NAME:

NSA/CSS Health, Medical and Safety Files

*Changes*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "Civil Service Commission" to "Office of Personnel Management". Also add "Executive Order 11807, Executive Order 9397, 29 C.F.R. 1906 and Department of Defense Instruction 1000.19".

RETRIEVABILITY:

Change "BY NAME" to "By name, social security number, and specific subject matter data elements".

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

GNSA 07

SYSTEM NAME:

NSA/CSS Motor Vehicles and Carpools

*Changes*

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Delete entry and insert "None".

GNSA 08

SYSTEM NAME:

NSA/CSS Payroll and Claims

*Changes*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete current entry and insert "Public Law 86-36; 31 U.S.C. §§ 66a, 951-953; 50 U.S.C. App § 2160; Titles 5 and 37 of the U.S. Code; and Titles 2, 4, 5 and 6 GAO Manual.

NOTIFICATION PROCEDURE:

Change "Information Offficer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy"

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy."

GNSA 11

SYSTEM NAME:

NSA/CSS Time, Attendance and Absence

*Changes*

NOTIFICATION PROCEDURE:

Change "Information Officer" to "Chief, Office of Policy".

RECORD ACCESS PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

CONTESTING RECORD PROCEDURES:

Change "Information Officer" to "Chief, Office of Policy".

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

*Delete current entry and insert* "None".

GNSA01

SYSTEM NAME:

NSA/CSS Access, Authority and Release of Information File

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentalized Segments—Each staff, line, contract and field element as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS civilian employees, personnel under contract or appointiment and military assignees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of authorizations to obtain keys; authorizations for access to specific sensitive information or areas; delegation of responsibility to authorize or request specific action, work projects or access; notification to report for duty in event of hazardous weather or other emergency; authorizations to officially release various types of communications; assignments to special activities; assignments as Agency representatives to department or other government committees, boards, task groups; assignments to special tasks in event of technical or national emergencies; assignments to duties as fire, safety, security officers, Combined Federal Campaign and blood donation workers; and assignments to other special or volunteer duties or activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86-36, Public Law 88-290, 18 U.S.C. § 798, Executive Order 12065.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this file is to provide a means to rapidly determine who may have access to information or keys; who is required to report for duty in special circumstances, who has been authorized to release official communications; who has been assigned additional special tasks, voluntary duties, or other duties. The file and its segments are used by each authorized staff, line, contract and field officer, employee, or assignee to make determinations as noted in the purposes above. Where required, specific information from this file may be made available to appropriate investigatory authorities engaged in national security or criminal investigations or to national defense and intelligence authorities or other governmental entities with respect to specific assignments or when emergency action is required.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in file folders, paper cards in file boxes, magnetic tapes, disks and other computer storage media, computer listings, microfilm.

RETRIEVABILITY:

By name.

SAFEGUARDS:

For paper, computer listing, cards and microfilm—secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals only. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Where data elements are derived from the Personal Security File—remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

Terminals are not available outside of headquarters area locations.

RETENTION AND DISPOSAL:

Retained until individual is no longer authorized access or release authority or assigned to specific additional duties. Computer files are purged and updated to reflect current status.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURES:

Requests from individual for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Applications and related forms requesting access, appointment or authorization, notifications of same, personnel records, personnel security records, and other sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k) (1) and (5). For additional information see agency rules contained in 32 CFR Part 299a.

GNSA02

SYSTEM NAME:

NSA/CSS Applicants

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CATEGORIES OF INDIVIDUALS COVERED BY A THE SYSTEM:

Applicants for employment with NSA/CSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains forms, documents and correspondence providing personal and qualifications information submitted by individual applicants, educational institutions, past employers, references. Records include processing items, status reports, test results, interview reports, reports of reviewing organizations and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86-36, Public Law 88-290, E.O. 10450, and Title 5 U.S.C. and appropriate implementing Office of Personnel Management directives in the Federal Personnel Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this file is to support the recruitment, selection, hire and placement of applicants. The file is used to document applicant processing, as a basis for selection decisions by individual agency elements and the personnel organization, and such other related uses as required. The users of this file include those staff, line, contract and field officers and employees as authorized and appropriate. In addition, files may be made available to the Office of Personnel Management, Freedom of Information Act and Privacy Act authorities, Department of Defense and other governmental entities as required and appropriate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders, cards in containers, logs, computer listings, computer magnetic tape, disks and other computer storage media, microfilm.

RETRIEVABILITY:

By name, social security number and other appropriate data elements.

SAFEGUARDS:

For paper, computer printouts and microfilm—secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by Deputy Director for Management Services. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests accepted from authorized persons only. Remote terminal inhibitions are in force with respect to access to computerized file or data relating to persons not assigned to the organization using a remote terminal. Remote terminals are secured, are available to authorized persons only and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

RETENTION AND DISPOSAL:

For applicants who are subsequently hired, records are transferred to Personnel File or destroyed as appropriate. For applicants not hired, records are retained for a period not to exceed one year unless employment requirements necessitate retention for a longer period.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Applicant, educational institutions, references, former employers including other governmental entities, interviewing and reviewing individuals including possible gaining organization, security and medical authorities and other sources as relevant and appropriate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k)(1) and (5). For additional information see Agency rules contained in 32 CFR Part 299a.

GNSA03

SYSTEM NAME

NSA/CSS Correspondence, Cases, Complaints, Visitors, Requests

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each staff, line, contract and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons calling or corresponding with NSA/CSS concerning congressional inquires; job opportunities; Freedom of Information and Privacy Act requests; other information requests, suggestions or comments; registering complaints; requesting appropriate security clearance and permission to visit; requesting or requiring information relating to litigation or anticipated litigation; and employees or assignees registering complaints or requesting information with respect to Equal Employment Opportunities; requesting inquiry or investigation by the Inspector General; requesting advice, opinions, or assistance from the General Counsel or provided to the General Counsel with respect to conflict of interest issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains correspondence from and to individuals, documents and memoranda related to the response; written material developed during or in anticipation of litigation or investigation of inquiries, complaints or grievances; written material developed in response to a request for advice or opinion from an individual; written material required by law, executive order, and regulations with respect to Equal Employment Opportunity investigations, Inspector General investigations, judicial branch subpoenas, orders and related actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86-36, Public Law 88-290, 5 U.S.C. § 552, Public Law 93-579, Public Law 92-261, Public Law 93-259, Executive Order 10450, Executive Order 11222, Executive Order 11478 and Executive Order 12065.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this file is to provide a record of the official responses and determinations of NSA/CSS to various inquiries for information, complaints, official actions of other governmental agencies and branches. The users of these files are those staff, line, contract and field officers, employees and assignees delegated the responsibility to respond on behalf of the Director, NSA, to such inquiries and complaints. The files are used to carry out the purpose set forth above, to provide an information base to be used in responding to the various reporting requirements levied by the Public Laws and Executive Orders cited in the authorities section of this notice. Information in the file may be used to provide reports in summary or statistical form to the Department of Defense, Office of Personnel Management, Office of Equal Employment Opportunity, Congress and those committees or subcommittees of the Congress having jurisdiction over matters covered by individual reports. Certain files may be provided to the General Counsel, Department of Defense, the Department of Justice, other appropriate governmental agencies and the judicial branch where litigation or anticipated civil or criminal litigation is involved or where sensitive national security investigations related to protection of intelligence sources or methods are involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, case or subject and within subject by name.

SAFEGUARDS:

Secure limited access facilities and within those facilities individual limited access offices. Files are stored in lockable containers and are only made available to individuals specifically authorized access or required to respond and individuals affected by actions taken or complaints received. Files related to sensitive investigations by the Equal Employment Opportunity Office, the Inspector General and General Counsel are additionally protected pursuant to appropriate statutes, executive orders or regulations and attorney-client privilege. In some cases records are sealed pursuant to sensitivity of subject matter or specific court order.

RETENTION AND DISPOSAL:

Records are retained on-site indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Individual correspondence, written materials developed in response to inquiries from executive branch departments and agencies, judicial branch elements, Congress, Congressional committees, individual Congressmen, other government and private entities as appropriate, and other sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k)(1), (2), (4) and (5). For additional information, see agency rules contained in 32 CFR Part 299a.

GNSA04

SYSTEM NAME:

NSA/CSS Cryptologic Reserve Mobilization Designee List.

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Appropriate staff and line elements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inactive duty military reservists assigned to NSA/CSS mobilization positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record consists of a computer listing of NSA/CSS reserve mobilization requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86-36 and Title 10, U.S. Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain Tables of Distribution on mobilization requirements by military service, military job code, billet title,

number of billets, mobilization duty location, training sponsor, and any special clearance requirements of the billet, and to provide a system of identifying mobilization designees with billets for training assignments.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:**

Computer listings, computer magnetic tapes, disks and other computer storage media.

**RETRIEVABILITY:**

By name and mobilization designee requirements.

**SAFEGUARDS:**

Secure limited access facilities and within those facilities lockable containers. Records are accessible only to authorized personnel.

**RETENTION AND DISPOSAL:**

Records are permanent. They are reviewed annually for changes in requirements. Superseded records are destroyed when no longer useful for reference purposes.

**SYSTEM MANAGERS(S) AND ADDRESS:**

Director, NASA.

**NOTIFICATION PROCEDURE:**

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD ACCESS PROCEDURES:**

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD SOURCE CATEGORIES:**

Individual's parent service.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k)(1) and (k)(5). For additional information, see agency rules contained in 32 CFR Part 299a.

**GNSA05**

**SYSTEM NAME:**

NSA/CSS Equal Employment Opportunity Data.

**SYSTEM LOCATION:**

National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

NSA/CSS civilian personnel and personnel under contract.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains civilian personal data and Agency organizational data to include job title, grade, date of birth, training, date of last promotion, educational attainments, social security number, time of service, personnel codes, organization assignment.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Law 92–261, Public Law 93–259, Public Law 86–36, Executive Order 11478, Chapter 713 of the Federal Personnel Manual.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Purpose of this file is to insure compliance with cited authorities with respect to equal employment opportunities. Users of the file are those staff, line, contract and field officers and employees specifically authorized by law, regulation, delegation of responsibility, and grant of access by the NSA Equal Employment Opportunity Director. The file is used to compile those studies, research, statistics and reports necessary to insure compliance with cited authorities. Reports, summaries and statistics may be made available to the Department of Defense, Office of Equal Employment Opportunity, Congress, Office of Personnel Management, Department of Justice and judicial branch elements as required by cited authorities, requested pursuant to those authorities or ordered by specific judicial branch order.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tape, disk or other computer storage media, computer listings, paper in file folders.

**RETRIEVABILITY:**

By name, social security number, and specific subject matter data elements.

**SAFEGUARDS:**

For paper, computer printouts and microfilm—Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by EEO Director. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Where data elements are derived from the Personnel System, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secure, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

**RETENTION AND DISPOSAL:**

File is routinely updated and old data disposed of as required. Individual data is subject to retention and disposal requirements specified for records contained in the Personnel System.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Equal Employment Opportunity, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**NOTIFICATION PROCEDURE:**

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD ACCESS PROCEDURES:**

Request from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Individuals themselves, organizational elements, personnel file, and other sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records and data elements in this file may be exempt pursuant to 5 U.S.C. § 552a(k) (1), (2) and (4). For additional information, see agency rules contained in 32 CFR Part 299a.

GNSA06

SYSTEM NAME:

NSA/CSS Health, Medical and Safety files.

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each staff, line, contract and field element as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS civilian employees, military assignees applicants, retirees, building concessionaires, assigned GAS employees, certain contract employees, visitors requiring emergency treatment, in certain cases members of employees' families with prior approval of the employee, blood donors, designated Health and Safety Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of complete medical questionnaires, results of physical examinations and laboratory tests, records of medical treatment and services, x-rays, notices of injury, forms and correspondence including exchanges with Department of Labor related to injury and subsequent claims, correspondence with personal physician, NSA/CSS Medical Center reports, safety reports, absence and attendance records, medical evaluations, fitness of duty reports, "Log of Federal Occupational Injuries and Illnesses," results of psychological assessment testing and interviews, psychiatric examination results and related reports, forms and notes, lists of blood donors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86-36, and Federal Employees Compensation Act of September 7, 1916, as amended, Title 5, U.S.C., and certain Office of Personnel Management implementation thereof as contained in Federal Personnel Manual. In addition, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. § 4582), and subchapter A of Chapter I, Title 42, C.F.R., Executive Order 11807, Executive Order 9397, 29 C.F.R. 1960 and Department of Defense Instruction 1000.19.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine fitness for hiring, continued employment of assignment and reassignment; to process accident and compensation claims; correct hazardous conditions; determine eligibility for disability retirement; record names of blood donors. When required, specific information from these files may be made available to the Department of Labor in those cases involving compensation claims and, with the permission of the individual, to other medical personnel or the American Red Cross for additional examination, treatment, counseling or other medical purpose; Freedom of Information and Privacy Act authorities as appropriate; and to other governmental entities as required and appropriate. Alcohol abuse patient records used in accordance with cited statute and regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tape, disk or other computer storage media, computer listings.

RETRIEVABILITY:

By name, social security number, and specific subject matter data elements.

SAFEGUARDS:

Secure, limited access facilities and within these facilities lockable containers. Records are accessible only to authorized personnel. For machine records stored on magnetic tape, disk or other computer storage within the computer processing area—additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records, and delivery to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of specific security offices at headquarters area locations.

RETENTION AND DISPOSAL:

Medical files and records on traumatic injury and occupational disease are transferred to official personnel folder upon separation; traumatic injury and occupational disease correspondence on civilian employees and retirees is retained indefinitely. Applicant medical files are retained for no more than one year or until date designated to individual; files on military assignees are forwarded to parent service upon reassignment from NSA/CSS; all other medical case files are destroyed upon termination of association with NSA/CSS. Psychological files on applicants are retained for no more than one year or until date designated to individual; all other files are retained for four years after end of individual's asssociation with NSA/CSS. Decentralized segments are either transferred with employee or assignee, or retained for a period after separation as appropriate but not to exceed three years and are then destroyed. Alchohol abuse patient records retained and disposed of pursuant to cited statute and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Fort George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Applicants, employees, assigness, official personnel folders, NSA Safety Officers and records, witnesses to accidents and injuries, medical and administrative personnel, blood donor personnel, members of employee's family with employee's permission, and other sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k)(1),

(4), (5) and (6) and may also be subject to certain special access procedures established pursuant to 5 U.S.C. § 552a(f)(3). For additional information, see agency rules contained in 32 CFR part 299a.

GNSA07

SYSTEM NAME:

NSA/CSS Motor Vehicles and Carpools

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each non-headquarters facility and field element as appropriate and required.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS civilian employees, military assignees, other governmental employees or personnel under contract granted extended temporary or permanent access to an NSA/CSS facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of machine-readable or regular paper cards, carpool or other transportation survey results, annotated machine listings, post motor vehicle violation reports, stolen vehicle reports, or other forms and correspondence related to parking privileges, transportation needs, local (parking lot) parking enforcement procedures, vehicle abuse, and other related matters as appropriate and required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. § 318a–b; 50 U.S.C. § 797; Title 34 C.F.R., Part 232, Appendix B; and Title 41 C.F.R., Part 101–20.111 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this file is to provide data necessary to enforcement of parking lot regulations, to assist employees with respect to vehicle abuse and stolen vehicles, provide carpool assistance, assure availability of adequate transportation and parking facilities, and other related matters. The uses of the file are to verify vehicle ownership, determine allocation of parking privileges, ensure the maintenance of adequate and safe parking areas, develop statistics with respect to parking and transportation requirements, encourage formation of carpools or other multiple-user transportation arrangements, provide a directory of potential participants in carpools or other multiple-user transportation arrangements, and other related uses as appropriate and required. The users of the file are those authorized line, staff, contract, and field element officers and employees; any employee, assignee or other individual working at an NSA/CSS facility interested in forming or joining a carpool or other multiple-user transportation arrangement; local civil and military law enforcement personnel as required and appropriate. Statistical data or selected individual data limited to name, address, and telephone number may be made available to commercial or private transportation entities where the individuals have indicated a desire to use or join a multiple-user transportation arrangement, supervisory, and other reviewing authorities in cases of parking privilege abuses, and other related users as required and appropriate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, machine-readable and other cards in appropriate containers, magnetic tape, disk or appropriate containers, magnetic tape, disk or other computer storage media, computer listings.

RETRIEVABILITY:

By name, motor vehicle identifier.

SAFEGUARDS:

For paper, cards and computer listings—secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers as appropriate. Access is limited to authorized users. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records, and delivery granted to authorized persons only.

RETENTION AND DISPOSAL:

File is routinely updated and old data disposed of as required. Individual data is subject to retention and disposal requirements specified for records contained in the Personnel System.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755.

RECORD SOURCE CATEGORIES:

Data provided by individuals, authorities in charge of parking facilities, local civil and military law enforcement entities, and other related sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

GNSA08

SYSTEM NAME:

NSA/CSS Payroll and Claims

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755. Decentralized Segments—Each staff, line, contract, and field element as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY A THE SYSTEM:

NSA/CSS civilian employees and applicants, military assignees, contractors, reemployed annuitants, personnel under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of records on time and attendance; overtime, shift and holiday work; absent without leave reports; payroll deductions, allotments and allowances; requests for leave; payments for travel performed in connection with permanent change of station, temporary duty, invitations, interviews, pre-employment interviews and initial entry on duty. Also included are Pay Adjustment Authorizations (DD Form 139) and Case Collection Vouchers (DD Form 1131) and, in connection with pay claims, waivers, requests for waivers, documents, correspondence, background data, recommendations and decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86–36; 31 U.S.C. §§ 66a, 951–53; 50 U.S.C. App. § 2160; Titles 5 and 37 of the U.S.C.; Titles 2, 4, 5 and 6 of the GAO Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain effective control over and accountability for all funds; to provide accounting data to support the NSA/CSS budget request and control the execution of the budget; provide financial information required by the Office of Management and Budget; provide financial information for NSA/CSS management purposes; provide for the input of permanent change data and the output of such data as leave without pay, reconciliation of files, periodic step increases, mass pay changes, and changes in leave categories; investigate, review, discuss, and recommend and implement decisions on pay claims waivers. When required, specific information from this file may be made available to other governmental entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits, tax audit and collections, and other related claims or actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; file cards; computer paper printouts; machine-readable cards; computer magnetic tapes, disks, and other computer storage media.

RETRIEVABILITY:

By name, social security number.

SAFEGUARDS:

For paper, computer printouts and microfilm—secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password, and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

RETENTION AND DISPOSAL:

Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

GNSA11

SYSTEM NAME:

NSA/CSS Time, Attendance, and Absence.

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755. Decentralized Segments—Each staff, line, contract, and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS civilian employees, personnel under contract, and military assignees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains request forms, time cards, authorization forms, notifications, locator cards, and other correspondence or revisions thereof related to actions concerning time, attendance, absence, annual leave, sick leave, leave without pay, advance leave, administrative leave, exemplary use of leave, unauthorized leave and absences, and other related matters.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755.

RECORD SOURCE CATEGORIES:

Forms, cards, requests and other documentation, submitted by individuals, supervisors, claims officers, Personnel File data, Time, Attendance and Access File data, and other sources as appropriate and required.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. § 552a(k)(1) and (k)(2). For additional information, see agency rules contained in 32 CFR 299a.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 86–36; Public Law 88–290, section 113 of the Budget and Accounting Procedures Act of 1950, as amended; 31 U.S.C. § 66a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of these files is to provide a means of accounting for all time, attendances, and absences of NSA/CSS civilian employees, contract employees, and military assignees. The users of these files are those staff, line, contract and field officers, employees, and assignees authorized to account for or investigate employee time, attendance, and absence. the files may be used to make performance, payroll, personnel, and security determinations. Where required, specific information from these files may be made available to appropriate investigatory authorities engaged in national security or criminal investigations, hearing examiners, and other authorized individuals with respect to grievances or adverse actions, and to those agencies identified in the NSA/CSS System of Records named "Payroll and Claims" as necessary to document payroll actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, file cards, machine readable cards, computer printouts, computer magnetic tapes, disks, and other computer storage media, and microfilm.

RETRIEVABILITY:

May be retrieved by name and in some cases social security number.

SAFEGUARDS:

For paper, cards, printouts and microfilm—secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers as

appropriate. Access by authorized individuals only. Current time cards are not secured with respect to individual employees within immediate working element. For machine-readable cards, computer magnetic tapes, and disks and other computer storage media within the computer processing area—additional secure limited-access facilities, specific processing requests from authorized persons only, specific authority to access stored cards, tapes or disk files.

**RETENTION AND DISPOSAL:**

Primary System—Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

Decentralized Segments—Records are temporary, are retained for the period the individual is assigned to an element, or disposed of as appropriate. Time cards and other appropriate forms for pay and leave purposes are forwarded each pay period to the payroll office.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, NSA.

**NOTIFICATION PROCEDURE:**

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD ACCESS PROCEDURES:**

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Policy Staff, National Security Agency/ Cental Security Service, Ft. George G. Meade, MD 20755.

**RECORD SOURCE CATEGORIES:**

Time cards, requests forms and related correspondence from individual employees and assignees, authorizations and notifications from authorizing officers, correspondence from supervisory personnel and investigating officers with respect to abuses of leave and attendance or unauthorized leave and absences, other records or reports related to either exemplary use of leave or abusive use of leave, and other sources as appropriate and required.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 80-25328 Filed 8-19-80; 8:45 am]

BILLING CODE 3810-70-M

## Office of the Secretary

## Privacy Act of 1974; New System of Records

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of new system of records.

**SUMMARY:** The Office of the Secretary of Defense publishes a notice of a new system of records, DWHS P37, entitled: "Grievance Records", which incorporates information contained in OPM's system of records OPM/GOVT–2, "Grievance Records", which is being deleted from OPM's annual republication of systems of records (September 1980).

**DATE:** This system shall be effective September 19, 1980.

**ADDRESS:** Privacy Act Officer, Directorate for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, Pentagon, Washinton, D.C. 20301.

**FOR FURTHER INFORMATION CONTACT:**

Mr. James S. Nash, telephone: 202–695–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act have been published in the Federal Register as follows:

FR Doc. 79-370542 (44 FR 74088) December 17, 1979
FR Doc. 80-7517 (45 FR 15604) March 11, 1980
FR Doc. 80-8135 (45 FR 17056) March 17, 1980
FR Doc. 80-13709 (45 FR 29390) May 2, 1980
FR Doc. 80-13707 (45 FR 29590) May 5, 1980
FR Doc. 80-15479 (45 FR 34034) May 21, 1980
FR Doc. 80-19461 (45 FR 43409) June 27, 1980
FR Doc. 80-23575 (45 FR 51880) August 5, 1980

This system does not fall within the purview of 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.

M. S. Healy,

*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

August 13, 1980.

**DWHS P37**

**SYSTEM NAME:**

Grievance Records.

**SYSTEM LOCATION:**

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washingon, D.C. 20301.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former Federal employees who have submitted grievances in accordance with 5 USC 2302, and 5 USC 7121, or a negotiated procedure.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records relating to grievances filed by Office of the Secretary of Defense (OSD) employees under 5 USC 2302, and 5 USC 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OSD may establish through negotiations with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 USC 2302, and 5 USC 7121.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**INTERNAL USERS, USES, AND PURPOSES:**

This information is used by the Office of the Secretary of Defense (OSD) in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

**EXTERNAL USERS, USES, AND PURPOSES:**

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Adminstration) in records management inspections conducted under authority of 44 U.S.C. 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

• Paper records maintained in file folders.

**RETRIEVABILITY:**

These records are retrieved by the names of the individuals on whom the records are maintained.

**SAFEGUARDS:**

These records are maintained in locked metal file cabinets, with access only to anthorized OSD Personnel employees.

**RETENTION AND DISPOSAL:**

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

**RECORD ACCESS PROCEDURES:**

Request for access to records may be obtained from the SYSMANAGER.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By Agency officials.

d. From related corrspondence from organizations or persons.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 80-26325 Filed 8-19-80; 8:45 am]
BILLING CODE 3810-70-M

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Black Higher Education and Black Colleges and Universities; Meeting

**AGENCY:** National Advisory Committee on Black Higher Education and Black Colleges and Universities.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the fifteenth meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

**DATE:** September 18 to 19, 1980, 9:00 a.m. to 5:00 p.m.

**ADDRESS:** The Forum, Howard University, Armour J. Blackburn University Center, Washington, D.C. 20059.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Suite 702-6, 1100 17th Street, NW., Washington, D.C. 20036, AC 202-653-7558.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 *et seq.)* and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 1) which set forth standards for the formation and use of advisory committees.

This Committee was established to examine all approaches to the higher education of Black Americans as well as the historically Black colleges and universities. Originally scheduled to expire on June 30, 1980, Secretary Hufstedler has extended the Committeed to June 30, 1982 so that the Education Department may continue to benefit from the Committee's recommendations.

The meeting on September 18-19, 1980, will be open to the public beginning at 9:00 am each day. The meeting will be held at Howard University, Armour J. Blackburn University Center, The Forum, Washington, D.C. 20059.

The proposed agenda will include the swearing in ceremony for the members, a review of the Charter and Committee functions and discussion by the Committee on future activities with

respect to issues and recommendations affecting the advancement of Black higher education and enhancement of the historically Black colleges.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 1100 17th Street, NW., Suite 702–6, Washington, D.C. 20036

Signed at Washington, D.C., on August 13, 1980.

Carol J. Smith,

*Program Delegate National Advisory Committee on Black Higher Education and Black Colleges and Universities.*

[FR Doc. 80-25290 Filed 8-19-80; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[Docket No. ERA-FC-80-027; OFC Case No. 62009-9170-01, 02-12]**

### Foster Wheeler Weirton; Acceptance of Petition for Exemption Pursuant to Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Acceptance of Petition for Exemption Pursuant to the Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978.

**SUMMARY:** On May 16, 1980, Foster Wheeler Weirton (Foster Wheeler) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting two new major fuel burning installations (MFBIs) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBIs. Criteria for petitioning for exemptions from the prohibitions of FUA are published at 10 CFR Part 501 *et seq.* (Interim Rules), published on June 6, 1980, and 45 FR 38276 (Final Rules), which became effective August 5, 1980.

The MFBIs for which the petition was filed are two identical field-erected steam boilers to be constructed at Foster Wheeler's Weirton, West Virginia facility. These boilers, designated as Nos. 1 and 2 by Foster Wheeler, will each have a design heat input rate capability of 497 million Btu per hour with a steam generating capacity of 350,000 pounds per hour and are capable of burning blast furnace gas in a mixture with natural gas.

Under § 505.28 of the Interim Rules, Foster Wheeler has requested a permanent fuel mixtures exemption to burn natural gas in a mixture with blast furnace gas in each of the two boilers. On June 20, 1980, Foster Wheeler requested that ERA use § 503.38 of the Final Rules to evaluate their petition. The decision to grant or deny the requested exemptions will be made under the Final Rules.

FUA imposes statutory prohibitions against the use of natural gas or petroleum as a primary energy source by new MFBIs which consist of a boiler. ERA's decision in this matter will determine whether Foster Wheeler will be granted a permanent exemption for these two boilers to use natural gas in a mixture with an alternate fuel.

As provided for in Sections 701(c) and (d) of FUA and §§ 501.30 and 501.31 of the Final Rules, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

**DATES:** Written comments are due on or before October 6, 1980. A request for public hearing must also be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room B-210, 2000 M Street, NW, Washington, DC 20461.

Docket No. ERA-FC-80-027 should be printed clearly on the outside of the envelope and on the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M street, NW, Room 3128, Washington, DC 20461, Phone: (202) 653-3679

Marilyn L. Ross, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6G-087, Washington, DC 20585, Phone: (202) 252-2967

Gail B. Johnson, Case Manager, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW, Room 3128, Washington, DC 20461, Phone: (202) 653-3675

**SUPPLEMENTARY INFORMATION:** FUA prohibits the use of natural gas or petroleum as a primary energy source in certain new MFBIs unless an exemption for such use has been granted by ERA.

The MFBIs for which these permanent exemptions are requested are two identical field-erected boilers, which each have a design heat input rate capability of 497 million Btu per hour, a steam generating capacity of 350,000 pounds per hour for each unit, and which are designed to burn blast furnace gas in a mixture with natural gas. These two boilers will be used to provide steam to the Weirton Steel Division of National Steel Corporation.

On May 16, 1980, Foster Wheeler filed a petition requesting permanent exemption for two identical field-erected steam boilers, designed to burn a fuel mixture of 75 percent blast furnace gas and 25 percent natural gas, to be constructed at Weirton, West Virginia. Sections 501.21 and 501.22 of the Interim Rules required payment of a filing fee concurrent with submission of a petition. Foster Wheeler failed to pay such a fee and ERA delayed commencement of the acceptability review of Foster Wheeler's petition until receipt of a filing fee. On June 20, 1980, Foster Wheeler requested that its petition be processed using the guidelines of the Final Rules issued May 30, 1980, rather than under the Interim Rules. EPA has agreed, has notified Foster Wheeler verbally that its petition has been accepted, and is hereby waiving the fee and initiating the administrative proceeding.

Section 503.38 of the Final Rules provides for a permanent exemption from the prohibitions of FUA for certain fuel mixtures containing natural gas or petroleum. To qualify, a petitioner must demonstrate to the satisfaction of ERA that:

(1) It proposed to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source; and

(2) The amount of petroleum or natural gas proposed for use in the mixture will not exceed the minimum percentage of the total annual Btu heat input of the primary energy sources used by the installation needed to maintain operational reliability consistent with maintaining a reasonable level of fuel efficiency.

If the exemption is granted, ERA will not require that the percentage of petroleum and natural gas used in the mixture be less than 25 percent of the total annual Btu heat input of the primary energy sources used by the installation.

Section 503.38(d)(1) provides for a certification alternatives to be used in lieu of the evidence requirements of § 503.38(c) for new installations where the amount of natural gas or petroleum to be used is less than 25 percent of the total annual Btu heat input of the

primary energy sources used by the installation.

Foster Wheeler has certified in its petition that the total amount of natural gas that is proposed to be used in these two identical boilers will not exceed 25 percent of the total annual Btu heat input of the primary energy sources used by each unit.

ERA hereby gives notice that Foster Wheeler's petition for a permanent fuel mixtures exemption has been determined to be complete as filed and is accepted. ERA retains the right to request additional relevant information from Foster Wheeler at any time during the pendency of these proceedings.

As set forth in § 501.3(d) of the Final Rules, the acceptance of this petition by ERA does not constitute a determination that Foster Wheeler is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: Economic Regulatory Administration, Room B-110, 2000 M Street, NW, Washington, DC, Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, DC, on August 14, 1980.

Robert L. Davies,

*Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.*

[FR Doc. 80-25312 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-01-M

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[ERA docket No. 80-Cert-019]

## Husky Oil Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

Husky Oil Company (Husky) 600 South Cherry Street, Denver, Colorado 80222, filed an application for certification of an elegible use of natural gas to displace fuel oil at its refinery facility in Cody, Park County, Wyoming, with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 on May 27, 1980. Notice of that application was published in the Federal Register (45 FR 51261, August 1, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days a from the date of publication. No comments were received. The delay between the filing date of the application and its publication in the Federal Register was due to the filing by Husky of an amendment to its application which was not received by ERA until July 15, 1980.

The ERA has carefully reviewed Husky's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Husky's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. A copy of the transmittal letter and the actual certification are appended to this notice.

Issued in Washington, D.C., on August 14, 1980.

F. Scott Bush,

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

Re ERA Certification of Eligible Use, ERA Docket No. 80-Cert-019, Husky Oil Company

Mr. Kenneth F. Plumb,

*Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C.*

Dear Mr. Plumb: Pursuant to the provisions of 10 CFR Part 595, I am hereby transmitting to the Commission the enclosed certification of an eligible use of natural gas to displace fuel oil. This certification is required by the Commission as a precondition to interstate transportation of fuel oil displacement gas in accordance with the authorizing procedures in 18 CFR Part 284, Subpart F. As noted in the certificate, it is effective for one year from the date of issuance, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. A copy of the enclosed certification is also being published in the Federal Register and provided to the applicant.

Should the Commission have any further questions, please contact Mr. Albert F. Bass, Deputy Director, Division of Natural Gas, Economic Regulatory Administration, 2000 M Street NW, Room 7108, Washington, D.C. 20461, telephone (202) 653-3280. All correspondence and inquiries regarding this certification should reference ERA Docket No. 80-Cert-019.

Sincerely,

F. Scott Bush,

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

**Certification by the Economic Regulatory Administration to the Federal Energy Regulatory Commission of the Use of Natural Gas for Fuel Oil Displacement by the Husky Oil Co.**

**[ERA Docket No. 80-CERT-019]**

*Application for Certification*

Pursuant to 10 CFR Part 595, Husky Oil Company (Husky) filed an application for certification of an eligible use of 125,740 Mcf (344 Mcf daily) of natural gas per year for its refinery facility located in Cody, Park County, Wyoming, with the Administrator of the Economic Regulatory Administration (ERA) on May 27, 1980. The application states that the eligible sellers of the gas are the Husky Oil Company (Husky) and the Michigan Consolidated Gas Company (Michigan Consolidated) and the gas will be transported by the Colorado Interstate Gas Company and the Montana-Dakota Utilities. The application indicates that the use of this natural gas is estimated to displace approximately 20,600 barrels of No. 6 fuel oil (3.0 percent sulfur) per year. The application also indicates that neither the gas nor the displaced fuel oil will be used to displace coal in the applicant's facilities.

*Certification*

Based upon a review of the information contained in the application, as well as other information available to ERA, the ERA hereby certifies, pursuant to 10 CFR Part 595, that the use of 125,740 Mcf of natural gas per year at the Cody Refinery purchased from Husky and Michigan Consolidated is an eligible use of gas within the meaning of 10 CFR Part 595.

*Effective Date*

This certification is effective upon the date of issuance, and expires one year from that date, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. It is effective during this period of time for the use of up to the same certified volume of natural gas at the same facility purchased from the same eligible sellers.

Issued in Washington, D.C., on August 14, 1980.

F. Scott Bush,

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

[FR Doc. 80-25313 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-01-M

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## Seminole Refining, Inc.; Final Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of final consent order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of a final Consent Order.

**EFFECTIVE DATE:** August 13, 1980.

**FOR FURTHER INFORMATION CONTACT:** Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, N.W., Room 5114, Washington, D.C. 20461. (202-653-3548).

**SUPPLEMENTARY INFORMATION:** On July 10, 1980, 45 FR 46475, the Office of Enforcement of the ERA published notification in the Federal Register that it executed a proposed Consent Order with Seminole Refining, Inc. of Saint Marks, Florida on July 2, 1980 which would not become effective until 30 days after publication. Interested

persons were invited to submit comments concerning the terms, conditions or procedural aspects of the proposed Consent Order. In addition, persons who believed they had a claim to all or a portion of the refund paid by Seminole Refining, Inc. pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA.

Although interested persons were invited to submit comments regarding the proposed Consent Order to the DOE, no comments were received. In addition, the ERA did not receive any claims to the refund. The proposed Consent Order has therefore been finalized.

The ERA shall receive $1,500.000.00 from Seminole Refining, Inc. upon the Effective Date of this Consent Order. Seminole Refining, Inc. shall further pay the sum of $400,000.00 to DOE in two annual installments of $200,000.00 each, together with interest at the rate of 15.39 percent per annum, compounded quarterly, running from the Effective Date of this Consent Order. Each installment shall be paid on or before the end of the twelfth and twenty-fourth month following the Effective Date of this Consent Order. These monies shall be placed in a suitable account pending determination of proper distribution.

Issued in Washington, D.C., on the 14th day of August, 1980.

Robert Gerring,

*Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration.*

[FR Doc. 80-25311 Filed 8-19-80; 8:45am]

BILLING CODE 6450-01-M

## Energy Information Administration

## Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Public Law 95-621), signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, Section 204 (e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and a high cost gas incremental pricing threshold which are to be effective September 1, 1980. These prices are based on the prices of alternative fuels.

**FOR FURTHER INFORMATION CONTACT:** Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th and Pennsylvania, Ave., NW, Rm. 4121, Washington, D.C. 20461. (202) 633-9710.

### Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

| State | Dollar per million Btu's |
|---|---|
| Alabama | 2.62 |
| Arizona | 2.84 |
| Arkansas | 2.99 |
| California | 2.82 |
| Colorado | 2.69 |
| Connecticut | 3.07 |
| Delaware | 2.90 |
| Florida | 2.67 |
| Georgia | 2.62 |
| Idaho | 3.48 |
| Illinois | 2.56 |
| Indiana | 2.52 |
| Iowa | 2.43 |
| Kansas | 2.05 |
| Kentucky | 3.51 |
| Louisiana | 1.92 |
| Maine | 3.06 |
| Maryland | 2.88 |
| Massachusetts | 3.01 |
| Michigan | 2.92 |
| Minnesota | 2.50 |
| Mississippi | 2.68 |
| Missouri | 2.09 |
| Montana | 2.69 |
| Nebraska | 2.37 |
| Nevada | 2.97 |
| New Hampshire | 3.32 |
| New Jersey | 2.90 |
| New Mexico | 2.54 |
| New York | 2.84 |
| North Carolina | 3.12 |
| North Dakota | 2.80 |
| Ohio | 2.20 |
| Oklahoma | 2.55 |
| Oregon | 3.56 |
| Pennsylvania | 2.81 |
| Rhode Island | 3.45 |
| South Carolina | 2.84 |
| South Dakota | 3.39 |
| Tennessee | 2.85 |
| Texas | 2.79 |
| Utah | 2.69 |
| Vermont | 3.42 |
| Virginia | 2.59 |
| Washington | 3.01 |
| West Virginia | 2.87 |
| Wisconsin | 2.59 |
| Wyoming | 2.52 |

### Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during June 1980 was $33.03 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203 (a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective September 1, 1980, is $7.40 per million BTU's.

### Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 51, issued in the same docket on the same date, established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings until November 1, 1980.

#### *A. Data Collected*

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1% sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of April 1980, May 1980 and June 1980.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

#### *B. Method Used to Determine Alternative Price Ceilings (1) Calculation of Volume-Weighted Average Price*

The prices which will become effective September 1, 1980, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, April 1980, May 1980 and June 1980. Reported prices for sales in April 1980 were adjusted by the percent change in the nationwide volume-weighted average price from April to June 1980. Prices for May 1980 were similarly adjusted by the percent change in the nationwide volume-weighted average price from May to June 1980. The volume-weighted 3-month average of the adjusted April 1980 and May 1980, and the reported June 1980 prices were then computed for each State.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

(2) *Adjustment for Price Variation*

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Prices*

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted-average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The appropriate lag adjustment factor (as discussed in Section III.B.4.) was then applied to the alternative fuel ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment*

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending August 13, 1980, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of June 1980. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

C. *Listing of States by Region*

States were grouped by the FERC to form eight distinct regions as follows:

| *Region A* | *Region B* |
|---|---|
| Connecticut | Delaware |
| Maine | Maryland |
| Massachusetts | New Jersey |
| New Hampshire | New York |
| Rhode Island | Pennsylvania |
| Vermont | |
| *Region C* | *Region D* |
| Alabama | Illinois |
| Florida | Indiana |
| Georgia | Kentucky |
| Mississippi | Michigan |
| North Carolina | Ohio |
| South Carolina | West Virginia |
| Tennessee | Wisconsin |
| Virginia | |
| *Region E* | *Region F* |
| Iowa | Arkansas |
| Kansas | Louisiana |
| Missouri | New Mexico |
| Minnesota | Oklahoma |
| Nebraska | Texas |
| North Dakota | |
| South Dakota | |
| *Region G* | *Region H* |
| Colorado | Arizona |
| Idaho | California |
| Montana | Nevada |
| Utah | Oregon |
| Wyoming | Washington |

Issued in Washington, D.C., on August 18, 1980.

Albert H. Linden, Jr.,

*Acting Administrator, Energy Information Administration.*

[FR Doc. 80-25380 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. EL80-31]

## Akutan, Alaska, City of; Declaration of Intention

August 12, 1980.

Take notice that on May 19, 1980, the City of Akutan filed a declaration of intention to construct and operate a hydroelectic facility on an unnamed stream near Akutan, Alaska. The declaration of intention was filed under § 23(b) of the Federal Power Act 16 U.S.C. § 817(b), and requests the Federal Energy Regulatory Commission to conduct an investigation to determine if a FERC license will be required for the project. Correspondence, with the application should be directed to Mr. Vincent McClelland, Project Coordinator, 301 East Firewood Lane, Anchorage, Alaska 99503.

The project would consist of: (1) an earthfill dam, 200 feet long and 30 feet high; (2) a 14-inch diameter penstock, 2000 feet long; (3) a powerhouse containing one generating unit with a rated capacity of 200 kW; and (4) a transmission line, approximately 1.5 miles long, extending from the powerhouse to Akutan.

Project power would be used in the City of Akutan.

*Comments, Protests or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before *September 29, 1980.* The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25254 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-298]

## El Paso Electric Co.; Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Intervention, Granting Waiver and Establishing Procedures

Issued July 29, 1980.

On March 24, 1980 El Paso Electric

Company (El Paso) submitted for filing a rate schedule [1] providing for the sale by El Paso to Southern California Edison Company (Edison) of specified amounts of capacity and associated energy during specified months during the years 1980, 1981 and 1982. In addition, energy will also be made available as scheduled by Edison at any time during the contract term subject to the availability of gas-fired generation on El Paso's system. El Paso requests waiver of the notice requirements of Section 35.3 of the Commission's regulations and an effective date of March 24, 1980, the date on which sales of energy to Edison commenced.

On April 28, 1980, Rio Grande Electric Cooperative (Rio Grande) filed an untimely petition to intervene stating that it does not oppose the sale of capacity and energy to Edison. However, Rio Grande states that it has not had an opportunity to fully evaluate the terms and conditions of the sale to be assured they are not discriminatory. Therefore, Rio Grande opposes summary acceptance of the proposed conditions. Rio Grande further states that the sale of capacity off-system by El Paso raises questions about the continued viability of the load projections which apparently induced El Paso to undertake its heavy involvement in the Palo Verde Nuclear Project.[2]

Subsequently, Rio Grande and El Paso filed a joint motion for approval of the firm capacity agreement. In the joint motion, El Paso stipulates that (1) with respect to Rio Grande's concern that the off-system sale will increase fuel clause rates, fuel clause charges will not increase as a result of the sale, and (2) with respect to Rio Grande's concern that approval of the agreement might have precedential effect on pending rate cases, the acceptance of the agreement will not constitute precedential findings as to the terms and conditions contained in the agreement. Therefore, the parties urge acceptance of the filing and termination of the docket.

## Discussion

The proposed monthly charge for the firm capacity is $4.80/KW of contract capacity. El Paso states that firm capacity is considered to be provided from system-wide resources and priced based on average system costs. The proposed charge for any energy scheduled for delivery to Edison is 115% of the system incremental energy cost [3] during the hour in which the energy is scheduled plus variable production operation and maintenance expenses. El Paso has used incremental cost pricing for energy associated with firm capacity supplied on a fully distributed average cost basis. This mix of incremental and fully costs may result in unreasonable rates, and we shall set this question for hearing.

El Paso has indicated in its transmittal letter that the agreement was negotiated as a means of reducing Edison's use of oil-fired generation. The company has also indicated that it does not object to collecting revenues under the agreement subject to refund pending a Commission decision in the docket. In light of these factors and Edison's agreement to the terms and conditions of the transaction including the commencement of energy sales as of March 24, 1980, we find there is good cause to grant the waiver of the notice requirements of § 35.3 of the Commission's regulations.

El Paso has indicated that there is a 15% adder to the rate for variable production operation and maintenance costs which is intended to recover the variable component of labor and materials required by generating facilities. This adder, which is set at 1.5 mills/KWh during 1980, is to be determined on an annual basis by the parties. Any change in this component of the energy charge must be timely filed with the Commission as a change in rate schedule under Section 35.13 of the Commission's Regulations together with appropriate cost support as required by that section.

Our review indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Therefore, we shall accept El Paso's submittal for filing, to become effective, subject to refund, as of March 24, 1980.

*The Commission orders:* (A) The rates proposed by El Paso are hereby accepted for filing, to become effective, subject to refund, as of March 24, 1980.

(B) Petitioner Rio Grande is hereby permitted to intervene in this proceeding subject to the Commission's Rules and Regulations; *Provided however,* that participation by such intervenor shall be limited to the matters set forth in its petition to intervene and its motion for approval, filed jointly with El Paso; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Changes in the variable production operation and maintenance component of the energy charge must be filed as changes in rate schedule pursuant to Section 35.13 together with appropriate cost support.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, specifically Sections 205 and 206, and by the Commission's Rules of Practice and Procedures and the Regulations under the Federal Power Act (18 CFR Chapter I (1979)), a public hearing shall be held concerning the justness and reasonableness of El Paso's proposed rates.

(E) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a prehearing conference in this proceeding, to be held within 30 days of the issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding administrative law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-24903 Filed 8-19-80; 8:45 am]
BILLING CODE 6450-85-M

[1] Designated as: *El Paso Electric Company*—Rate Schedule FERC No. 27.

[2] *See El Paso Electric Co.*, Opinion No. 85 (May 19, 1980).

[3] System incremental energy cost is defined in the agreement as the greater of (1) the product of El Paso's incremental heat rate and replacement fuel cost, or (2) El Paso's purchased energy cost, both expressed in Mills/KWh.

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[Project No. 3224]

## Gillette, Wyo., City of; Application for Preliminary Permit

August 12, 1980.

Take notice that the city of Gillette (Applicant) filed on June 23, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3224 to be known as Keyhole Dam located on the Keyhole Reservoir in Crook County, Wyoming, near the town of Moorcraft. Correspondence with the Applicant should be directed to: Paul G. Schamp, P.O. Box 3003, Gillette, Wyoming 82716.

*Project Description*—The proposed project would consist of: (1) a proposed powerhouse containing two generating units, each rated at 450 kW; (2) a proposed 12-kV transmission line approximately 1.5 miles long; and (3) appurtenant facilities. The estimated annual output of the proposed project would be 4,000,000 kWh. Applicant would utilize an existing dam and reservoir owned by the U.S. Corps of Engineers. The Applicant's facilities would be located on private lands.

*Purpose of Project*—The city of Gillette would utilize the energy produced to meet the growth and demand upon its utilities.

*Proposed Scope and Cost of Studies under Permit*—The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it proposes to conduct economic and environmental studies, prepare application for necessary State and Federal permits, and to develop preliminary and final designs of the project. The Applicant estimates the cost of the proposed studies would be $50,000.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before September 20, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than November 19, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 *FR* 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (*as amended,* 44 *FR* 61328, October 25, 1979).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before September 20, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commision and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25255 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

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[Docket No. SA80-142]

## Kansas Joint Venture; Application for Adjustment

August 12, 1980.

Take notice that on May 13, 1980, Kansas Joint Venture (KJV), c/o John V. Black, Esquire, 306 South Oak, Pratt, Kansas, 67124, filed with the Federal Energy Regulatory Commission (Commission) an application for an adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301, *et seq.* KJV petitions for a modification to, exemption from, and/or exception to 18 CFR 273.204 of the Commission's regulations.

Specifically, KJV states that it is the operator of the Fatzer #1 Well, SW/4 NE/4 Section 5, T27N, R17W, Kiowa County, Kansas, and the Taylor #1 Well, NW¼ NE¼ Section 20, T27N, R17W, Edwards County, Kansas, and that the subject wells were put on production in June 1979. In the Fall of 1979, KJV alleges it commenced work on applications for Section 103 determinations which were subsequently filed on March 14, 1980, with the appropriate jurisdictional agency in Kansas. The purchaser of the gas is Panhandle Eastern Pipeline Company.

KJV is eligible to make interim collections of the Section 103 price from the date a notice was filed with this Commission under § 273.202. Upon receiving a final determination, KJV would be eligible for retroactive collections back to its original filing date for jurisdictional determination on March 14, 1980. However, KJV also requests waiver of the regulations in order to collect the Section 103 price as of the date of initial delivery from these wells. KJV asserts that the operation of § 273.204(a) of the Commission's regulations will prevent collection of the difference between the Section 103 rate and the contract price ($1.66/MCF) between June 1979 and March 14, 1980, and would result in an unfair distribution of burdens and special hardships to it.

KJV contends that relief should be granted because it is a small company, lacking the staff of its larger competitors and hence at a disadvantage in keeping abreast of FERC regulations and filing requirements.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979 (44 FR 18961, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of 18 CFR 1.41(e). All petitions to intervene must be filed on or before September 4, 1980.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25256 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

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[Docket No. ER 80-582]

## Pacific Gas & Electric Co.; Filing

August 12, 1980.

The filing Company submits the following:

Take notice that on August, 1, 1980 Pacific Gas and Electric Company (PG&E) submitted for filing a Notice of Cancellation of PG&E's Rate Schedule F.P.C. No. 21 applicable only to the City of Redding, California. The Rate Schedule expired by its own terms on April 1, 1971.

A copy of this filing has been served upon Redding, California and the California Public Utilities Commission.

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 or 1.10). All such petitions or protests should be filed on or before September 2, 1980. 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. 80-25257 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

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[Projects Nos. 3105 and 3106]

## Power Authority of the State of New York; Granting Interventions

August 12, 1980.

The City of New York, New York, the Town of Olive, New York, and New York State Assemblyman Maurice D. Hinchey have petitioned to intervene in the proceeding involving the application of the Power Authority of the State of New York (PASNY) for an exemption from licensing for its proposed Ashokan Project, FERC Project No. 3105. Additionally, the City of New York has petitioned to intervene in the proceeding involving PASNY's application for an exemption from licensing for its proposed Kensico Project, FERC Project No. 3106.

The Ashokan Project would utilize New York City's water supply facilities, and would be located in the Town of Olive and in Maurice Hinchey's Assembly District. The Kensico Project would also utilize New York City's water supply facilities. Thus, each petitioner has an interest in the proceeding(s) in which intervention is sought.

The City of New York supports the grant of exemptions for both projects, provided such action does not impair its rights as owner of certain of the projects' facilities or as consumer of the projects' power. The Town of Olive and Assemblyman Hinchey opposed the grant of an exemption for the Ashokan Project at the time they petitioned to intervene; they now support the exemption.

Pursuant to § 375.302 of the Commission's regulations, 45 FR 21216 (1980), *amending* 18 CFR 3.5(a) (1979), the Petitioners are permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Federal Power Act. Participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25258 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

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[Project No. 3239]

## Puget Sound Power & Light Co.; Application for Preliminary Permit

August 12, 1980.

Take notice that Puget Sound Power & Light Company (Applicant) filed on July 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3239 to be known as Sandy Creek Project located on the Sandy, Rocky, Sulphur, and Dillard Creeks in Whatcom County, Washington. The Project would occupy lands of the United States within the Mount Baker-Snoqualmie National Forest. Correspondence with the Applicant should be directed to: Mr. David H. Knight, Vice President—Power Supply, Puget Sound Power & Light Company, Puget Power Building, Bellevue, Washington 98009.

*Project Description.*—Applicant proposes to divert water from four creeks—Sandy, Rocky, Sulphur, and Dillard—into a single powerhouse. The proposed project would consist of: (a) four 25-foot high concrete arch or gravity diversion dams; (b) approximately 17,800 feet of low pressure pipeline (diameter range: 36–60 inches); (c) a 48-inch diameter, 4,800-foot long penstock; (d) a concrete powerhouse with a total rated capacity of 8,900 kW, located on the south bank of Sandy Creek at a point approximately 1½ miles east of Baker Lake; and (e) a 2.9-mile long, 12.5-kV transmission line connecting the powerhouse to the Applicant's existing Upper Baker Development (FERC Project No. 2150) substation, south of the powerhouse.

*Purpose of Project.*—Project power would be integrated into the Applicant's existing transmission and distribution network.

*Proposed Scope and Cost of Studies Under Permit.*—Applicant has requested an 18-month preliminary permit to prepare a project report, including preliminary designs, and results of geological, hydrological, environmental and economic feasibility studies. Applicant has indicated that: (a) no new roads would be required for conducting the studies; (b) an existing stilling pipe and equipment platform would be used for reestablishment of the gaging station on Sulphur Creek; (c) test borings would be done in areas which are clear of vegetation, boring holes would be backfilled, and the ground surface reconditioned to the extent possible.

The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $500,000.

*Purpose of Preliminary Permit.*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments.*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications.*—This application was filed as a competing application to the Rocky Creek Water Power Project No. 3018 on Rocky and Sulphur Creeks in Whatcom County, under 18 CFR 4.33 *as amended*, 44 FR 61328 (October 25, 1979), and, therefore, no further competing applications or

notices of intent to file a competing application will be accepted for filing.

*Comments, Protests, or Petitions To Intervene.*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procdures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before September 29, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25259 Filed 8-19-80; 8:45 am]
BILLING CODE 6450-85-M

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[Docket No. RI80-12]

## Eldon Walker, et al.; Petition

August 12, 1980.

In the matter of Eldon Walker, Henrietta Walker, Earl Walker, W. A. Robinson, and Jalmer Berg, Petitioners, v. Michigan Wisconsin Pipe Line Company, Defendant.

Take notice that on July 15, 1980, Eldon Walker, Henrietta Walker, Earl Walker, W. A. Robinson, and Jalmer Berg filed a petition with the FERC against Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), alleging: that in 1961 petitioners drilled and completed the Galbreath No. 1 well in Section 14, Township 27 North, Range 25 West, Harper County, Oklahoma, and sold the gas therefrom to Michigan Wisconsin under three contracts they assumed from others in connection with acquisition of the leases involved, and under a fourth contract they entered into with Michigan-Wisconsin directly; that Michigan Wisconsin misrepresented the expiration dates of three of these contracts to petitioners, causing them to believe they were not eligible to be replaced by rollover contracts, when in fact they were eligible; and that petitioners, after learning of the correct expiration dates, requested Michigan Wisconsin to execute rollover contracts for these three expired contracts effective as of their expiration dates, but that Michigan Wisconsin refuses to do so. Petitioners charged Michigan Wisconsin with a failure to bargain in good faith.

Petitioners request that the Commission order Michigan Wisconsin to enter into the contracts with them which they believe themselves to be entitled; that the Commission waive the requirement of Opinion No. 699-H that a rollover contract must be executed before a rollover rate can be granted; or, in the alternative, that they be granted immediate abandonment. For protective purposes, petitioners request that their filing be treated as a notice of unilateral change in price pursuant to Opinion No. 699-H, effective on the dates of expiration of the three above-mentioned contracts. They also request that, during the pendency of this proceeding, they be allowed to shut in their well or be granted a protective order restoring their sales volumes to them.

Any person desiring to be heard or to protest said petition 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 September 15, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25260 Filed 8-19-80; 8:45 am]
BILLING CODE 6450-85-M

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[Project No. 2545]

## Washington Water Power Co.; Application for Amendment of a Major License

August 12, 1980.

Take notice that on March 3, 1980, the Washington Water Power Company of Spokane, Washington (Applicant), filed an application for an amendment of a major license with the Federal Energy Regulatory Commission [pursuant to the Federal Power Act, 16 U.S.C., Sections 791(a)—825(r)] to include the constructed Post Falls hydroelectric development in the license for project No. 2545. The Post Falls development is located on the Spokane River in the counties of Kootenai and Benewah, Idaho. Correspondence concerning the application should be sent to: Mr. J. P. Buckley, Vice President and Secretary, P.O. Box 3727, Spokane, Washington; and Mr. Alan P. O'Kelly, 1400 Washington Trust Financial Center, Spokane, Washington 99204.

The constructed Post Falls Development consists of: 1) the 48,000-acre Coeur D'Alene Lake with a useable storage capacity of 223,100 acre-feet; 2) the 431-foot long and 31-foot high spillway dam across the north channel, consisting of piers, one rolling sector gate, and eight Taintor gates; 3) the 127-foot long and 25-foot high concrete gravity spillway dam across the south channel containing six wooden sluice gates; 4) the 215-foot long and 64-foot high concrete gravity powerhouse dam containing six gates and forming the east wall of the powerhouse; 5) five 56-foot long and 11.3-foot diameter steel penstocks and one penstock which is stubbed off for a sixth unit; 6) the 175-foot long and 62-foot wide brick powerhouse containing five generating units, each rated at 2250 kW; 7) a 16,000-KVA 2.4/115-kV step-up transformer and a 4687-KVA 2.4/115-kV step-up transformer; and appurtenant facilities.

Applicant proposes to install an additional sixth generating unit, rated at 350 kW, in the existing powerhouse at a cost of $1,050,000. Further, Applicant, jointly with the City of Post Falls, proposes to expand, on Company-owned land, the existing South City Park. Project power would be integrated into the Applicants's interconnected transmission and distribution system.

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be hard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the Requirements of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in Section 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person

must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before September 29, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25261 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-586]

## West Penn Power Co. and Duquesne Light Co.; Filing

August 12, 1980.

The filing Company submits the following:

Take notice that Allegheny Power Service Corporation (APSC) on August 4, 1980 tendered for filing on behalf of (West Penn), one of the electric utilities which make up the integrated Allegheny Power System, and Duquesne Light Company (Duquesne), Amendment No. 9 to the Interchange Agreement dated February 1, 1968, between West Penn and Duquesne designated West Penn Rate Schedule FPC No. 24 and Duquesne Rate Schedule FPC No. 9.

Amendment No. 9: (1) provides for an increase in the demand charge for Short Term power from $0.70 to $0.85 per kilowatt-week and increase in the charge for Short Term power obtained by the supplying party from another system from $0.24 per kilowatt-week; (2) as required by the Commission in Rule 35.23 (f), places a $0.001 per kilowatt-hour cap on the adder to the out-of-pocket costs of providing energy coming from a third party sold under the Short Term and schedules; (3) places demand charges on emergency Service energy which comes from third party of $0.0017 per kilowatt-hour when supplied by Allegheny Power System companies and $0.0016 per kilowatt-hour when supplied by Duquesne; (4) increases the mimimum charge for energy sold under the Emergency Service schedule generated by the supplying party's own system to $0.03 per kilowatt-hour; and (5) places a $0.002 per kilowatt-hour cap on the adders to the out-of-pocket costs of energy supplied by Allegheny Power System companies under the Emergency Service and Short Term schedules. Applicants state that since Short Term and Limited Term power transactions will be scheduled from time to time as load and capacity conditions on the systems of the parties dictate it is impossible to estimate the increase in revenues which would result from Amendment No. 9.

Any person desiring to be heard or 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 Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protest should be filed on or before September 2, 1980. 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 inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 80-25262 Filed 8-19-80; 8:45 am]

BILLING CODE 6450-85-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1578-6]

## Commonwealth of Virginia, Marine Sanitation Device Standard; Receipt of Supplemental Information in Support of Petition

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of receipt of supplemental information and solicitation of public comment.

**SUMMARY:** In 1979, the Commonwealth of Virginia petitioned the Environmental Protection Agency (the Agency) for a determination under section 312(f)(3) of the Clean Water Act that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for a specified portion of the Rappahannock River. The Agency has recently received supplemental information from the Commonwealth. This notice summarizes that information and solicits public comment on the Commonwealth's petition, as supplemented. The Agency has also solicited further information from the Commonwealth, which will be made available for public comment when it is received.

**DATES:** The Agency will accept public comments on the petition October 6, 1980. The Agency has requested the Commonwealth to provide additional information by September 1, 1980.

**ADDRESSES:** The Commonwealth's submissions and previous public comments are available for inspection and copying at the Agency's Public Docket Room, Library, Room 2404, 401 M Street, SW., Washingtn, D.C. 20460. Comments should be addressed to Joseph A. Krivak, Director, Criteria and Standards Division (WH-585), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the Commonwealth's submissions contact Joseph A. Krivak at the above address or by telephone: (202) 755-0100.

**SUPPLEMENTARY INFORMATION:** On November 26, 1979, the Environmental Protection Agency (the Agency), published notice that the Commonwealth of Virginia had petitioned it to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Rappahannock River from its mouth (determined by a line between Windmill Point and Stingray Point) upstream to the Thomas Downing Bridge at Tappahannock, and including all creeks, coves, and estuaries within the specific area (44 FR 67524). The petition area is bordered by four counties: Middlesex, Lancaster, Richmond and Essex. This petition was filed pursuant to section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322. Under section 312, if the Agency makes an affirmative determination on this petition, the Commonwealth of Virginia may designate the specified waters as "no discharge" waters.

Section 312(f)(3) states that:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessles are reasonably available for such water to which such prohibition would apply.

On March 11, 1980 (45 FR 15648), after receiving public comment on the Commonwealth's petition, the Agency published its determination that there were major deficiencies in the petition and that it was unable to make the finding required by section 312(f)(3). The Commonwealth was invited to submit additional information by April 10, 1980

and did so. EPA reviewed this information and in an April 30, 1980 letter to the Commonwealth requested clarification concerning the Commonwealth's additional information. EPA indicated that a response was required before the Agency could publish a notice of receipt of the Commonwealth's additional information. The letter indicated that the Agency was particularly interested in capacities of the facilities to handle high volumes of sewage and in the construction and operation of the equipment at each facility. The Commonwealth responsed on June 4, 1980. This notice invites public comment on the Commonwealth's original petition, as modified by its submissions on April 9 and June 4.

The Commonwealth has certified that there are eleven pumpout facilities within the area covered by the petition and a twelfth (Ruark's Boat Yard and Marina) on the north shore of the Piankatank River. The twelve pumpout facilities identified by the Commonwealth are shown in Table 1. Additional information pertaining to these facilities is shown in Table 2.

Table 1.—*With Modified Information, Submitted Apr. 9, 1980 and June 4, 1980*

| Name of marina | Geographic location | Nautical miles from mouth of river | Operating hours | Days per week |
|---|---|---|---|---|
| Walden Bros. Marina | Broad Creek in Middlesex County. | 1.9 | April 1 to October 30, 8 a.m. to 5 p.m. November 1 to March 31, 8 a.m. to 5 p.m. | 5 (closed Saturday and Sunday). |
| Miller's Marine Railway | Broad Creek in Middlesex County. | 1.9 | January 1 to December 31, 8 a.m. to 4:30 p.m. | 5 (closed Saturday and Sunday). |
| Dozier's Dockyard Marina | Broad Creek in Middlesex County. | 1.9 | April 1 to October 31, 9 a.m. to 4:30 p.m. | 6 (closed Tuesday). |
| Montgomery and Wilson Marine Railway | Broad Creek in Middlesex County. | 2.0 | April 1 to December 1, Monday to Friday 8 a.m. to 5 p.m., Saturday 8 a.m. to 12:30 p.m. | 5½ (closed Saturday afternoons and Sunday). |
| Norton's Marina | Broad Creek in Middlesex County. | 2.0 | April 1 to November 30, 8 a.m. to 4:30 p.m. | 6 (closed Sunday). |
| Rappahannock Yachts | Carter Creek in Lancaster County. | 9.2 | January 1 to December 1, 8 a.m. to 5 p.m. | 7. |
| Regent Point Marina | Locklies Creek in Middlesex County. | 9.3 | April 1 to October 31, 10 a.m. to 6 p.m. | 7. |
| | | | November 1 to March 31, 10 a.m. to 5 p.m. | 2 (open Saturday and Sunday). |
| Tides Lodge Marina | Carter Creek in Lancaster County. | 11.0 | March 15 to November 28, 8 a.m. to 6 p.m. | 7. |
| Yankee Point Sailboat Marina | Myers Creek in Lancaster County. | 14.5 | March 1 to October 31, 9 a.m. to 5 p.m. | 7. |
| Urbanna Marine Corp Marina | Urbanna Creek in Middlesex County. | 15.8 | January 15 to December 1, 8 a.m. to 5 p.m. | 6 (closed Sunday). |
| Garrett's Marina | On the south shore of the Rappahannock River in Essex County. | 29.3 | May 1 to October 31, 8 a.m. to 5 p.m. | 6 (closed Sunday). |
| | | | November 1 to April 30, 7:30 a.m. to 4 p.m. | 5 (closed Saturday and Sunday). |
| Ruark's Boat Yard and Marina | On the north shore of the Piankatank River in Middlesex County. | 9.0 | April 15 to November 1, 9 a.m. to 4 p.m. | 5 (closed Saturday and Sunday). |

Table 2.—*With Modified Information, Submitted Apr. 9, 1980, and June 4, 1980*

| Name of marina | Available minimum water depth at mean low water (feet) | Method of disposal of collected sanitary wastes | Number of vessels moored at Marina | Number of transient vessels serviced |
|---|---|---|---|---|
| Walden Bros. Marina | 6 | a | 53 | 1 during season. |
| Miller's Marine Railway | 8 | a | 8 | 15 per month; most vessels served are commercial. |
| Dozier's Dockyard Marina | 3 | d | 30 | 3 per week. |
| Montgomery and Wilson Marine Railway | 4 | a | 16 | 3 per year. |
| Norton's Marina | (1) | a | 36 | 2 or 3 per month during season. |
| Rappahannock Yachts Marina | 6 | a | 25 | 0 (does not have slips for transient vessels). |
| Regent Point Marina | 6 | d | 9 | 1 per month during season. |
| Tides Lodge Marina | 6 | b | 29 | Less than 15 during 1979 boating season. |
| Yankee Point Sailboat Marina | 6 | d | 55 | 3 per week. |
| Urbanna Marine Corp. Marina | 6 | c | 80 | 20 per week.[2] |
| Garrett's Marina | 7 | a | 34 | Less than 2 vessels per year. |
| Ruark's Boat Yard and Marina | 8 | d | 45 | 1 per week. |

[1] No information provided.
[2] Urbanna Marine Corp. sponsors weekend boating events; many of these vessels are trailered to the marina for these events.
a. Sanitary wastes pumped to septic tank, contents to be removed by septic tank contractor.
b. Sanitary wastes pumped to raw sewage pump station which discharges to Tides Golf Lodge Sewage treatment plant, NPDES permit No. VA0029343.
c. Sanitary wastes pumped into Town of Urbanna sewages system, NPDES permit No. VA0026263.
d. Sanitary wastes pumped to holding tank; contents of tank removed by septic tank contractor.

In addition, the Commonwealth has certified that there are an estimated 2298 vessel slips at marinas and other places where vessels are moored in the area covered by the petition and that all marina slips are filled to capacity year-round. On April 9, 1980, the Commonwealth stated that the estimate of 2298 boats was only an estimate of boats moored at marinas in the area and did not include all boats moored and stored at private locations in the area.

The Commonwealth has secured from the Virginia Commission of Game and Inland Fisheries (GIFC—the agency in Virginia charged with the responsibility of registering boats) a list of all boats registered in the four counties bordering the petition area. This list shows Lancaster County with 2424 boats registered, Middlesex County with 3313, Richmond, County with 702, and Essex County with 1076, for a total of 7515. In the case of Lancaster and Middlesex Counties, the number of boats includes numerous boats located in waters not included in the petition area, e.g., in the Piankatank River and other waters feeding directly into the Chesapeake Bay. The Commonwealth has no figures on how many boats are moored within the two counties but registered elsewhere. In order to estimate the number of boats moored in the area under petition, the Commonwealth has assumed that boats registered outside of these four counties but moored in waters under petition are approximately equal in number to boats registered in the four counties but moored outside of the waters under petition.

The Commonwealth has also certified the number of vessels over 20 feet in length and having a cabin. Lancaster had 417, Richmond had 49, Middlesex had 1011, and Essex had 74 for a Total of 1551. Of these 1551 boats, 1496 were classified as used for pleasure boating. Thus, a probable maximum total of approximately 1500 boats moored in the petition area could be equipped with marine toilets eventually. Best Commonwealth estimates show that 11.4% of the registered boats in Virginia have marine toilets. Applying this figure (11.4%) to the total number of boats registered in the petition area (7515), a total of only 857 boats would have marine toilets. Therefore, in the Commonwealth's opinion, this figure of 1500 watercraft with a marine toilet capability within the area under petition appears to be reasonable.

The Commonwealth has certified that the cost of a pumpout at four of the eleven marinas is five dollars ($5.00); Garrett's Marina and Montgomery and Wilson Marine Railway have increased the charge to ten dollars ($10.00). Costs of pumpout at the remaining five pumpout facilities has not been provided.

On March 11, 1980, the Agency noted that five commenters stated that there are no pumpout facilities at any of the numerous public boat ramps or dockages owned and/or operated by the Commonwealth. The Commonwealth did not dispute these statements. In the Commonwealth's opinion, the presence or absence or pumpout facilities at public boat ramps or dockages owned and/or operated by the Commonwealth is irrelevant to the granting or denial of this petition. The Commonwealth stated that representatives from the Virginia State Health Department recently visited all of the publicly-owned boat ramps within the area under petition, and with the exception of one, all were found to have such water depths that boats with flow-through marine toilets or holding tanks could not have been launched or could have been launched only with a great deal of difficulty. In the Commonwealth's opinion, there is little need to provide pumpout facilities at publicly-owned boat ramps. No further information was provided by the Commonwealth on the one exceptional boat ramp.

The Commonwealth has submitted certified inspections of the eleven pumpout facilities within the area covered by the petition that are fully and completely operational as follows:

(a) The Commonwealth has certified that the pumpout facility at Regent Point Marina consists of a 5-gallon plastic drum with a vented top, and a diaphragm hand pump capable of pumping sewage. A 5-foot length of 1½-inch O.D. (outside diameter) wire-inserted hose is attached to the suction side of the pump. A right-angle nozzle is attached to the end of the suction hose. The discharge line, a 1½-foot length of 1½-inch O.D. hose, is securely attached to the top of the 5-gallon drum and to the pump. The entire unit must be carried on board the vessel; the contents of the holding tanks are then pumped into the five-gallon drum. The collected waste is hand-carried approximately 300 feet to a 2000-gallon holding tank. The waste is then drained through a hose into the holding tank. A plastic, 6-inch diameter access port provides entrance to the holding tank, which is serviced by a septic tank contractor. The Commonwealth states that the owner prefers using a 5-gallon tank because he can carry it on board the sailboats rather than setting a large tank on his dock; he also can operate the unit alone. In the Commonwealth's opinion, a 5-gallon drum is adequate for this particular marina.

(b) The Commonwealth has certified that the pumpout facility at Tides Lodge Marina consists of a dock-mounted, electric ¾ HP motor with an attached, self-priming, impeller pump. The 10-foot suction line is a flexible 1½-O.D. wire-inserted hose with a right-angle nozzle. The discharge line is a 25 foot length of 1½-inch O.D. plastic pipe and leads to an ejector-pump station. The contents are pumped from this station to another ejector pump station approximately 400 feet away. This station pumps about 0.25 mile to the Tides Lodge extended aeration package sewage treatment plant. In addition, the second pump station is backed up by three 1000-gallon holding tanks to insure against pump station failure.

(c) The Commonwealth has certified that the pumpout facility at Rappahannock Yachts is a 15-gallon plastic rectangular tank with dual handles attached at each end. Sewage is removed by a diaphragm hand pump. Approximately 10 feet of 1½-inch O.D. wire-inserted suction line and 2 feet of 1½-O.D. wire-inserted discharge lines are attached to the pump. A right-angle nozzle is installed at the end of the suction line and the unit must be carried out on the dock. The tank is hand-carried by two men approximately 120 feet and drained through a 2-foot length of 1¼-inch O.D. line into the owner's septic tank, which is serviced by a septic tank contractor.

(d) The Commonwealth has certified that the pumpout facilities at Yankee Point Sailboat Marina consist of a dock mounted, electric ¼ HP motor with an impeller pump. The 5-foot suction and 6-foot discharge hose are made up of 1½-inch O.D. wire-inserted hose and there is a right-angle nozzle attached to the end of the suction hose. Sewage is pumped approximately 200 feet to a 1000-gallon holding tank. Contents of the tank will be removed by a septic tank hauler.

(e) The Commonwealth has certified that the pumpout facility at Urbanna Marine Corporation Marina consists of a portable centrifugal pump with a gas engine to pump sewage from the boat to a 1000-gallon holding tank. The holding tank is then pumped into the Town of Urbanna's sewage treatment plant. The pump is hand carried out on the docks and then the suction and discharge 1½-inch O.D. lines are attached to the pump. A right-angle nozzle is attached to the end of the suction line.

(f) The Commonwealth has certified that the pumpout facility at Garrett's Marina consists of a 55-gallon steel

drum mounted sidewise on a two-wheel trailer. An electric motor with a ¾-inch impeller pump is mounted on the trailer next to the drum. Twenty feet of 1½-inch O.D. wire-inserted suction hose and 2 feet of 1½-inch O.D. rubber discharge hose are attached to the pump. Boats are pumped out at a single dockside location. After servicing the boat(s), the trailer-mounted unit is towed by a tractor approximately ⅛ mile to one of four septic tanks located at the owner's private residence. Contents of the 55-gallon drum are then drained into one of the tanks through 20 feet of 1½-inch O.D. discharge line. A gate valve is provided on the pump discharge line into the 55-gallon drum to provide access for flush water or disinfectant.

(g) The Commonwealth has certified that the pumpout unit at Dozier's Dockyard Marina consists of a 22-gallon steel drum with a diaphragm-type hand pump mounted on the drum. One 10-foot length of 1½-inch O.D. non-kink hose is used for the suction line with a right-angle nozzle. The discharge line is a 1½-foot length of 1½-inch O.D. wire inserted hose, and the contents are emptied through a 1½-inch O.D. brass swing valve. The drum is securely mounted on a two-wheeled cart and then wheeled to a vessel moored at the dock. Wastes are then pumped from the boat and wheeled approximately 150 feet to the owner's 1,000-gallon holding tank. The drum is drained through a 2-foot length of 1½-inch O.D. hose through an access port to the holding tank, which will be serviced by a septic tank contractor.

(h) The Commonwealth has certified that the pumpout facility at Miller's Marine Railway consists of a 22-gallon plastic "travel-along" tank (as used in the recreational vehicle industry). It is attached by metal straps to a two-wheeled dolly and a diaphragm hand pump, and is capable of pumping sewage through a 2-foot length of 1½-inch O.D. wire-inserted discharge hose. The suction line is a 5-foot length of 1½-inch O.D. wire-inserted, flexible hose. The collected wastes are wheeled approximately 150 feet and emptied into a 1000-gallon septic tank. Access to the septic tank is through a 6-inch diameter VC pipe. Miller's Marine Railway tank will be serviced by a septic tank hauler.

(i) The Commonwealth has certified that the pumpout facility at Norton's Marina consists of a vented 55-gallon steel drum mounted on its side to a four-wheeled cart. A 1½ HP electric motor drives a 1¼-inch impeller pump. An 8-foot length of a 1½-inch O.D. wire-inserted, plastic suction hose with a right-angle nozzle is attached to the pump. The discharge hose is a 2-foot length of 1½-inch diameter cast iron pipe; it discharges into the top of the drum. The tank is hand pulled approximately 100 feet and drained through a 2-inch I.D. gate valve into a 6-inch diameter ABS plastic line into the owner's septic tank, which will be serviced by a septic tank contractor.

(j) The Commonwealth has certified that the pumpout facility at Walden Brothers' Marina consists of a 55-gallon steel drum mounted on its side on a four-wheeled wagon. A dockside pumpout unit (consisting of a ¾ HP electric motor impeller pump with a 10-foot wire-inserted, plastic suction hose, a right-angle nozzle, and an automatic shut-off vacuum switch) removes the sewage from boats. Discharge to the wagon mounted drum is through a 1-inch I.D. plastic hose. The drum is wheeled approximately 150 feet and drained into the Walden Brothers' Marina septic tank.

(k) The Commonwealth has certified that the pumpout facility at Montgomery and Wilson Marine Railway consists of a 30-gallon galvanized steel tank mounted sidewise on a two-wheel cart. A hand-operated diaphragm pump with six feet of 1½-inch I.D. suction line and eight feet of 1½-inch discharge line is attached. A right-angle nozzle is attached to the end of the suction line. The tank is wheeled approximately 150 feet and emptied into the Montgomery and Wilson Marine Railway 1000-gallon septic tank.

For facilities using septic tanks and holding tanks, the Commonwealth has certified that these tanks will be emptied by local septic tank contractors.

Finally, the Commonwealth presented a sampling of data from conversations with boat owners and marina operators in the State of Michigan during the Year 1973. The Commonwealth stated that Michigan boat owners reported that they usually pumped out their holding tanks (10 to 20 gallon capacity) two or three times per season; marina operators reported that the average time to pump out and flush a 10-gallon holding tank ranged from 5 minutes with a one-horsepower pump to 15 minutes with a hand pump; and operating reports suggested that peak pumpout demand would be about 10 vessels per day for a marina with 100 slips. The Commonwealth also stated that the owners of Rappahannock Yachts and Regent Point Marina estimated that it takes them about 30 minutes to move a pumpout unit to dockside, pump out an on-board holding tank, and transport the wastes to an on-shore septic tank. The Commonwealth then estimated the following times for various activities required in pumping out a holding tank:

| | Minutes |
|---|---|
| (1) Time to moor vessel and/or bring pump-out unit to dock | 5–15 |
| (2) Time to remove contents | 2–10 |
| (3) Time to flush out tank | 2–10 |
| (4) Time to transport portable tank to on-shore holding tank, empty contents, and return | 5–15 |
| Total time | 14–50 |
| Average time | 32 |

Upon examination of all the information submitted so far by the Commonwealth, the Agency has found that there are still deficiencies in the information. Many are similar in character to those listed in the Agency's March 11, notice.

(1) Some of the pumpout facilities on which the Commonwealth relies are not operational. The Commonwealth has certified that the Norview Marina had not yet installed a pumpout facility as of April 9, 1980. The Commonwealth also stated that the previously existing pumpout at the Urbanna Bridge Marina had been damaged by an automobile and had not been replaced. On June 4, 1980 the Commonwealth stated that the pumpout facility at the Urbanna Bridge Marina was not fully and completely operational as of April 9, 1980.

In addition, the Commonwealth's petition of April 9, 1980, stated that Windmill Point Marina, Southside Marine Service, Inc., and Whelan's Marina and Campground will install pumpout facilities and that these facilities will be operational during the 1980 boating season. To the best of the Agency's knowledge, these three facilities are still not operational. Until certified by the Commonwealth to be fully and completely operational, no pumpout facility can be considered in any determination pursuant to section 312(f)(3) of the Clean Water Act.

(2) The Commonwealth has stated in inspection reports that several certified pumpout facilities (Yankee Point Sailboat Marina, Tides Lodge Marina, Walden Brothers' Marina, and Norton's Marina) will not service transient vessels. This appears to conflict with the data provided by the Commonwealth

and summarized in Table 2, and suggests that all transient traffice must be serviced at other marinas.

In addition, the Commonwealth has certifed that Norton's Marina moored 38 vessels; however, the minimum water depth at mean low water was not provided by the Commonwealth. A signed, sworn, and notarized statement submitted on behalf of the owner of Norton's Marina reveals that there were 78 vessels moored and that the available minimum water depth at mean low water was 9 feet. The Commonwealth has certified that the available minimum water depth at mean low water for Montgomery and Wilson Marine Railway was 4 feet and that there were 16 vessels moored at the Marina. A signed, sworn, and notarized statement submitted on behalf of the owner reveals that the available minimum water depth at mean low water was 6 feet and that there were 53 vessels moored at the Marine Railway.

(3) The Commonwealth has acknowledged that there are no pumpout facilities within the area covered by the petition to serve the grain barges and tugs that load at the grain-storage facility owned by Perdue, Inc., at Tappanhannock, Virginia, which is within the area covered by the petition. This facility has a storage capacity of 2,150,000 bushels of beans, corn, wheat, and barley. The Commonwealth states that about 40 barge-loads are shipped from the facility each year. The facility is serviced by one tugboat with a draft of 9½ feet when fully fueled, and two barges with a draft of 10½ feet when loaded. Only one barge is used per trip. In the fall of 1979, approximately 45 to 50 loaded barges were shipped down the Rappahannock River from the Perdue, Inc. facility at Tappahannock.

The Commonwealth has certified that the tugboat is equipped with a Model M-50, Type II Microphor MSD. This is a five-man unit fitted with sump tank (effluent retention tank) and discharge pump. The barges have no sanitary facilities. On rare occasions, Perdue, Inc. of Tappahannock consigns several loads of grain to Cargill, Inc. of Chesapeake, Virginia. These grain consignments are barge-loaded at Tappahannock and transported by the Allied Towing Company of Norfolk. All Allied tugboats operating out of Norfolk are equipped with Type II Microphor MSD's.

The Commonwealth has stated that if its petition is granted, tugboats operating at Perdue, Inc. will have to "secure" the marine toilet while operating in the no discharge area. Apparently, the Commonwealth expects that these tugboats will not have any functioning toilet facilities for their crews while in the no discharge area. Section 312, however, requires that pumpout facilities be reasonably available for all vessels. The Commonwealth does not state why it believes that this would not require denial of the petition.

On the other hand, Virginia has described the tugboat that normally services Perdue, Inc. as having both a Type II MSD and an effluent retention tank and discharge pump. If the tugboat were capable of retaining its sewage or treated effluent for a period of time and then discharging treated effluent, it might not require a pumpout facility in the area described in the petition.

(4) The Commonwealth acknowledges that Ruark's Boat Yard and Marina is 9 nautical miles beyond the mouth of the Rappahannock River, and thus 9 nautical miles from the area covered by the petition. This is a significant distance; the Agency stated on March 11, 1980 that the facility is not "reasonably available" to the area covered by the petition. The Commonwealth has provided no additional justification for its consideration with the petition.

(5) Finally for all facilities, the Commonwealth has stated that, in its opinion, the facilities are adequate for the peak usage expected at the facility. However, the Commonwealth provides scant analysis on which it might have based its opinion. The Agency must reach its own decision on the adequacy and availability of facilities, on the basis of information submitted.

The agency has requested the Commonwealth to submit further information by September 1, 1980 addressing the questions raised above, other questions raised in the public comments, and detailed calculations of the likely demands on and capacity of the 11 pumpout facilities. The Commonwealth's submittal will be made available for public inspection and comment. If the Commonwealth's clarification does not demonstrate that adequate facilities are reasonably available for the safe and sanitary removal and treatment of sewage from all vessels, the Agency will deny the Commonwealth's petition on its merits.

Dated: August 14, 1980.

Eckardt C. Beck,

*Assistant Administrator for Water and Waste Management.*

[FR Doc. 80-25302 Filed 8-19-80; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[PR Docket No. 80-506, File No: 014155-IB-40** and PR Docket No. 80-507, File No. 014176-IB-40**]**

## Bob Bobbitt Co., Inc., and Porter Lighting Fixture Co., Inc.; Designating Applications for Consolidated Hearing on Stated Issues

### Memorandum Opinion and Order

Adopted: August 12, 1980.

Released: August 18, 1980.

In re Applications of Bob Bobbitt Co., Inc., 15800 Addison Road, P.O. Box 141, Addison, Texas 75248, and Porter Lighting Fixture Co., Inc., 12331 North Central Expressway, Dallas, Texas 75243, For Authorizations for New Facilities in the Business Radio Service.

By the Chief, Private Radio Bureau.

1. The Chief, Private Radio Bureau (the Bureau) has before him for consideration the above-captioned applications of Bob Bobbitt Co., Inc. (Bobbitt) and Porter Lighting Fixture Co., Inc. (Porter) for authorization of new facilities in the Business Radio Service. Bobbitt's application, initially filed April 9, 1980, was returned as defective May 16, 1980. It was resubmitted June 3, 1980. Porter's application, also initially filed April 9, 1980, was returned as defective May 20, 1980. It, too, was resubmitted June 3, 1980. Also before the Bureau is information concerning an investigation conducted by the Dallas, Texas District Office of the Commission's Field Operations Bureau into unlicensed operation by Bobbitt and Porter of the radio facilities proposed in their respective applications.

2. Bobbitt and Porter each seeks authorization of 800 MHz band conventional control and mobile stations to operate in conjunction with Specialized Mobile Relay Station WYQ504 licensed to Benjamin L. Farris d/b/a Golden Circle Communications in Richardson, Texas. It appears from the Dallas office's investigation that on or about March 31–April 1, 1980, Farris furnished radio equipment to both Bobbitt and Porter and permitted them to operate that equipment through Farris' Station WYQ504. It also appears that both Bobbitt and Porter operated the radio equipment provided to them by Farris until April 9, 1980, the date when the Dallas office commenced its investigation and when the applications were first received at the Commission.

3. The information before the Bureau concerning the unlicensed operation by Bobbitt and Porter raises serious questions as to whether Bobbitt or Porter possess the requisite character

qualifications or is sufficiently competent or shows sufficient interest with respect to the licensing and implementation of radio facilities to receive a grant of the authorization which each here seeks. Because the Bureau cannot make the necessary finding, pursuant to Section 309(a) of the Communications Act of 1934, as amended, that a grant of the above-referenced applications would serve the public interest, convenience and necessity, the applications must, in accordance with Section 309(e) of the Act, be designated for hearing.

4. Accordingly, it is ordered, that in accordance with the provisions of Section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), the above-captioned applications of Bob Bobbitt Co., Inc., File No. 014155–IB–40**, and Porter Lighting Fixture Co., Inc., File No. 014176–IB–40**, for authorization of new facilities in the Business Radio Service are, pursuant to authority delegated in Sections 0.131(a) and 0.331 of the Commission's Rules, designated for a hearing in a consolidated proceeding, at a time and place to be specified at a later date, on the following issues:

(a) To determine whether Bob Bobbitt Co., Inc. operated radio facilities in the Business Radio Service which were not licensed to it.

(b) To determine whether Porter Lighting Fixture Co., Inc. operated radio facilities in the Business Radio Service which were not licensed to it.

(c) To determine whether any unlicensed operation by Bob Bobbitt Co., Inc. was knowing or willful or negligent.

(d) To determine whether any unlicensed operation by Porter Lighting Fixture Co., Inc. was knowing or willful or negligent.

(e) To determine, in light of the evidence adduced pursuant to issues (a) and (c) hereinabove, whether Bob Bobbitt Co., Inc. possesses the requisite character qualifications to receive a grant of its application which is in part the subject of this proceeding.

(f) To determine, in light of the evidence adduced pursuant to issues (b) and (d) hereinabove, whether Porter Lighting Fixture Co., Inc. possesses the requisite character qualifications to receive a grant of its application which is in part the subject of this proceeding.

(g) To determine, in light of the evidence adduced pursuant to issues (a) and (c) hereinabove, whether Bob Bobbitt Co., Inc. has exhibited such lack of interest or carelessness concerning conduct of its affairs with respect to the licensing and implementation of radio facilities that it should not be entrusted with the radio authorization which it is here seeking.

(h) To determine, in light of the evidence adduced pursuant to issues (b) and (d) hereinabove, whether Porter Lighting Fixture Co., Inc. has exhibited such lack of interest or carelessness concerning conduct of its affairs with respect to the licensing and implementation of radio facilities that it should not be entrusted with the radio authorization which it is here seeking.

(i) To determine, in light of the evidence adduced pursuant to issues (a), (c), (e) and (g) hereinabove, what disposition of the above-captioned application of Bob Bobbitt Co., Inc. will best serve the public interest, convenience and necessity.

(j) To determine, in light of the evidence adduced pursuant to issues (b), (d), (f) and (h) hereinabove, what disposition of the above-captioned application of Porter Lighting Fixture Co., Inc. will best serve the public interest, convenience and necessity.

5. It is further ordered, that Bobb Bobbitt Co., Inc., Porter Lighting Fixture Co., Inc. and the Chief, Private Radio Bureauy are made parties in this proceeding.

6. It is further ordered, that the burden of proceeding with the introduction of evidence and the burden of proof are, pursuant to Section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), and Sections 1.254 and 1.973(e) of the Commission's Rules, upon Bob Bobbitt Co., Inc. with respect to issues (a), (c), (e), (g) and (i) set forth in paragraph 4 hereinabove, and upon Porter Lighting Fixture Co., Inc. with respect to issues (b), (d), (f), (h) and (j) set forth in paragraph 4 hereinabove.

7. It is further ordered, that each of the parties named in paragraph 5 hereinabove, in order to avail itself of the opportunity to be heard, shall within 20 days of the mailing of this notice of designation by the Secretary of the Commission, file with the Commission, in triplicate, a written notice of appearance that it will appear on the date fixed for hearing and present evidence on the issues specified in this Order, as prescribed in Section 1.221 of the Commission's Rules.

8. It is further ordered, that the Secretary of the Commission shall serve a copy of this Order, by Certified Mail, Return Receipt Requested, upon each of the parties to this proceeding (except the Bureau) at the address furnished in its respective application.

Federal Communications Commission.

Arlan K. van Doorn,

*Acting Chief, Private Radio Bureau.*

[FR Doc. 80-25283 Filed 8-19-80; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

**[Agreement No. T-3918]**

### Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreement do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreement No. T–3918 is a one-year lease between the Port Everglades Authority and Sea-Land Service, Inc. for a vacant lot in Broward County, Florida. The lot is to be used in the handling and processing of containers and related equipment. The OEA's major environmental concern was whether the agreement would significantly affect energy usage and/or the quality of the air, water, noise and biological environment.

The OEA has determined that the Commission's final resolution of Agreement No. T–3918 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725. Interested parties may comment on the environmental assessment on or before September 9, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Joseph C. Polking,

*Assistant Secretary.*

[FR Doc. 80-25284 Filed 8-19-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-52; Agreements Nos. 10186, As Amended, 10332, As Amended, and 10371, As Amended, Agreement No. 10377, Agreements Nos. 10364 and 10329]

### Intent To Prepare an Energy and Environmental Assessment

Docket No. 80-52 is an investigation to determine whether Agreements Nos. 10186, as amended, 10332, as amended, 10371, as amended and 10377 should be approved, disapproved or modified and whether Agreements Nos. 10364 and 10329 should be disapproved or modified, pursuant to section 15 of the Shipping Act, 1916.

The Office of Environmental Analysis believes that the final resolution of the issues in this proceeding may constitute a major regulatory action affecting energy efficiency or conservation within the meaning of the Energy Policy and Conservation Act of 1975 and a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Written comments regarding the possible energy and environmental impacts are invited. Such comments should be submitted on or before September 9, 1980, to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

Copies of discovery materials and all future correspondence, pleadings and exhibits exchanged or filed in these proceedings will be served on Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

Joseph C. Polking,

*Assistant Secretary.*

[FR Doc. 80-25308 Filed 8-19-80; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL ACCOUNTING OFFICE

### Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were accepted by the Regulatory Reports Review Staff, GAO, on August 11 and August 12, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such acceptances.

The notice includes the title of the NRC requests received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before September 8, 1980, and should be addressed to Mr. John M. Lovelady Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

#### Nuclear Regulatory Commission

The NRC requests clearance of application, recordkeeping, and reporting requirements contained in new 10 CFR Part 75, Safeguards on Nuclear Materials—Implementation of US/IAEA Agreement. The United States, as a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), has joined with other nations in an effort to limit the spread of nuclear weapons. To encourage wide-spread adherence to the NPT by non-nuclear weapon States, which would be committed to accept the application of safeguards administered by the International Atomic Energy Agency (IAEA), President Lyndon B. Johnson in 1967 announced that the United States would permit IAEA to apply its safeguards to nuclear activities in this country—excluding only those with direct national security significance. This policy has been reaffirmed by each succeeding President and has been referred to by other Governments as a consideration affecting their decision to ratify the NPT.

The instrument for applying IAEA safeguards in the United States is a formal Agreement. The US/IAEA Agreement contains provisions which parallel agreements between IAEA and non-nuclear-weapons States, the principal difference being the exclusion of national security activities. Implementation of the Agreement requires the cooperation of NRC licensees, in accordance with new 10 CFR Part 75 and amendments to 10 CFR Parts 40, 50, 70, 150 and 170. 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement (with respect to NRC and Agreement State licensees) the Agreement between the United States and the IAEA for the application of safeguards in the United States.

The requirements in Part 75 apply to all persons licensed by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the United States eligible list. The requirements of Part 75 also apply to holders of construction permits and to persons who intend to receive source material or special nuclear material. The United States eligible list is a list of installations eligible for IAEA safeguards under the US/IAEA Safeguards Agreement which the Secretary of State or his designee files with the Commission. Excluded from the list are activities having direct national security significance and activities dealing with mining and ore processing.

These proposed implementing regulations identify provisions requiring licensees: (1) To submit information concerning their installation for the use of IAEA; (2) to establish, maintain, and follow prescribed material accounting and control procedures; (3) to provide reports; and (4) to permit inspections by IAEA representatives.

For NRC to implement its responsibilities, it is necessary for licensees affected by the new 10 CFR Part 75 to maintain records and submit reports as follows: Section 75.3(a) states that the NRC may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of the part. Section 75.11(a) provides that each licensee subject to the requirements of the Part must submit to the NRC in response to and within the period, which shall be at least 45 days, specified in a written request from the NRC, specific information with respect to any installation in which the licensee carries out licensed activities. The information required is listed in the section. Section 75.11(b) provides that each licensee shall submit to the NRC information with respect to any modification or change at the installation affecting the information described in § 75.11(a). Section 75.12(b)(1) provides that a licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transmitted physically to the IAEA. Section 75.14(a) provides that at the time information is submitted in accordance with § 75.11, and promptly whenever changes are made, each licensee subject to the provisions of Part 75 shall submit to the NRC information on organizational responsibility for material accounting and control and health and safety rules to be observed by the Agency inspectors at the installation. Section 75.21, Material Accounting and Control, general requirements are: A measurement system for the determination of the

quantities of nuclear material received, produced, shipped, lost or otherwise removed from the inventory, and the quantities on inventory; the evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty; procedures for identifying, reviewing and evaluating differences in shipper/receiver measurements; procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses; and maintenance of accounting and operating records; and also procedures, including frequency, for taking a physical inventory. Section 75.32 provides that the initial report shall be reported on the last day of the calendar month in which the NRC gives the licensee notice that an initial report is required. The report is to be submitted on DOE/NRC–742 within 20 days after the initial reporting date. Section 75.34 provides that inventory change reports are to be submitted on Form DOE/NRC–741 which serves as a shipping and transfer document for special nuclear material, source material and tritium as required of NRC and Agreement State licensees. Section 75.35 provides that material balance reports are to be submitted on Form DOE/NRC–742 in accordance with printed instructions for completing the form. Section 75.43(b) provides that notification shall be given of any proposed shipment of nuclear material for peaceful purposes under an export license issued pursuant to Part 110, in an amount exceeding one effective kilogram, directly or indirectly to any non-nuclear-weapon state (as referred to in Article III(2) of the Treaty on the Non-Proliferation of Nuclear Weapons, 21 U.S.T. 483). If the licensee anticipates that it will make two or more shipments for peaceful purposes within any period of 90 days, directly or indirectly to destinations in the same non-nuclear-weapon state, notification shall be given of each shipment if the aggregate quantity of nuclear material to be transferred exceeds one effective kilogram. Section 75.43(c)(2) provides that notification shall be given with respect to any proposed import of nuclear material described in paragraph (c)(1) of this section in an amount exceeding one effective kilogram. If a licensee anticipates that it will receive two or more shipments of such nuclear material within any 90-day period from points of origin in the same country, notification shall be given with respect to each shipment if the quantity exceeds one effective kilogram. Section 74.43(d) provides that notification shall be given with respect to any shipments of nuclear material (other than small quantities in the form of samples containing less than 0.01 effective kilogram per sample) to a non-eligible destination (i.e., any destination in the U.S. other than an installation on the U.S. eligible list). The NRC estimates that the average annual burden per licensee will be as follows: Section 75.3(a), 8 hours; § 75.11(a), 360 hours; § 75.11(b), 8 hours; § 75.12(b)(1), 4 hours; § 75.14(a), 10 hours and 2 hours; § 75.21, 425 hours; § 75.32, 1 hour; § 75.34, 250 hours; § 75.35, 1 hour; § 75.43(b), 1 hour and 1 hour; § 75.43(c) 1 hour and 1 hour; and § 75.43(d), 1 hour.

The NRC requests clearance of a new Form N–71, Design Information Questionnaire. The NRC through Part 75 (specifically section 75.11) and conforming amendments to Parts 30, 40, 50, 70, 150 and 170 of its regulations will require its licensees to submit data on Form N–71 developed by the International Atomic Energy Agency to provide confidential information. The NRC will be a recipient of the form; however, the primary user of the data collected will be the International Atomic Energy Agency (IAEA). The NRC estimates approximately 200 licensees will be required to complete and submit a Design Information Questionnaire, Form N–71, as a one-time only requirement and that time to complete the Questionnaire will require 360 hours per licensee.

The NRC requests clearance for the application requirement contained in new § 40.31(g) of 10 CFR Part 40, Domestic Licensing of Source Material. This new application requirement implements part of the US/IAEA Agreement program. Section 40.31(g) requires that an applicant for a license to possess and use source material in a uranium hexaflouride production plant or a fuel fabrication plant and any other applicant for a license to possess and use more than one effective kilogram of source material should file with NRC the identificaion of the installation; a description of the general design of the installation in reference to flow of nuclear material; a description of features of the installation relating to material accounting, containment and surveillance; and a description of the existing and proposed procedures of the installation for nuclear material accounting and control. This information should be filed at least nine months prior to the date the applicant desires to receive the source material (or earlier upon request by the Commission). The NRC will grant an exemption from these requirements if it determines that the installation will not be included on the United States eligible list. The NRC estimates that 15 applicants will be affected by this requirement annually and that the burden per applicant will average 360 hours.

The NRC requests clearance for the reporting requirement contained in new § 50.78 of 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities. This new reporting requirement implements part of the US/IAEA Agreement program. Section 50.78 requires that each holder of a construction permit shall, if requested by the Commission, submit installation information and permit verification thereof by the International Atomic Energy Agency (IAEA), and take such other action as may be necessary to implement the Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11 thru 75.14 of the Commission's regulations. If the holder of the construction permit is a nuclear power plant or a non-power reactor, the information should be submitted to the Director, Office of Nuclear Reactor Regulation. For all other installations, the Director, Office of Nuclear Material Safety and Safeguards. The NRC estimates that 150 licensees will be affected by this reporting requirement and that burden per licensee will average 360 hours.

The NRC requests clearance for the application requirement contained in new § 70.21(g) of 10 CFR Part 70, Domestic licensing of Special Nuclear Material. This new application requirement implements part of the US/IAEA Agreement program. Section 70.21(g) requires that an applicant for a license to possess and use more than one effective kilogram of special nuclear material should file with the NRC the installation information described in § 75.11; and the applicant shall permit verification by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11 thru 75.14. The commission will grant an exemption from the requirements of § 70.21(g), upon application if it determines that the installation will not be included on the United States eligible list. The installation information should be filed at least 9 months prior to the date when the applicant desires to receive the special nuclear material (or earlier upon request by the Commission). Applicants who desire to receive the special nuclear material within 9 months after the effective date of this paragraph should submit the installation information as soon as possible. The NRC estimates that this application requirement will affect 35 applicants

annually and that the burden per applicant will average 360 hours.

The NRC requests clearance of the application requirement contained in new § 150.17a(b) of 10 CFR Part 150, Exemptions and Continued Regulatory Authority in Agreement States Under Section 274. This new application requirement implements part of the US/IAEA Agreement program. Section 150.17a(b) requires that an applicant for a license from an agreement state authorizing the possession of source material in amounts greater than one effective kilogram (except in ore processing) shall file with the Commission, at least 9 months prior to the date when the applicant desires to receive such source material or earlier upon request by the Commission, the installation information described in § 75.11, except that in the case of applicants who desire to receive the source material within 9 months after the effective date of this section, the installation information shall be submitted as soon as possible and the applicant shall permit verification by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11 thru 75.14. The Commission will grant an exemption from this requirement upon application, if it determines that the installation will not be included on the United States eligible list.The NRC estimates that number of applicants affected annually will be approximately 154 and the average burden per applicant will be 360 hours.

The NRC requests clearance of new Form 740M, Concise Note. The NRC in accordance with 10 CFR Parts 30, 40, 50, 70, 75 and 150 will require certain licensees who are authorized to possess at any one time and location Special Nuclear Material (SNM) to report to the NRC some discrete data. This will be done by the use of DOE/NRC Form 740M. In some cases it may be desirable to provide additional explanatory information with reports filed on DOE/NRC Forms 741, 742 or 742C, Form 740M is the vehicle to be used to submit a Concise Note. The NRC estimates approximately 200 licensees are expected to submit two reports per year and that the preparation burden for a report will average 15 minutes.

The NRC requests clearance of revision of Form 741/741A, Nuclear Material Transaction Report. The NRC in accordance with 10 CFR Parts 30, 40, 50, 70, 75 and 150 will require certain licensees who are authorized to possess at any one time and location Special Nuclear Material (SNM) to report to the NRC all nuclear material transactions. This will be done by the use of DOE/NRC Form 741/741A. The revision is five new data elements: (1) Concise Note attached to indicate if a DOE/NRC Form 740M is attached as may be required by the Facility Attachment; (2) type of inventory changes—all changes to inventory that meet the reporting criteria must be reported using a code; (3) production code (for DOE use only); (4) key measurement point, used for reporting a location where nuclear material appears in such form that it may be measured to determine material flow or inventory; and (5) measurement identification, this code indicates where and when the material was measured and consists of three parts denoting the measurement basis, measurement point, if other than (3) above, and the measurement method. The last two items apply only to licensees reporting under the requirements in 10 CFR Part 75. The NRC estimates approximately 2,000 licensees will be required to file Form 741/741A and that burden for preparation of each report will average 40 minutes.

The NRC requests clearance of revision of Form 742, Material Balance Report. The NRC in accordance with 10 CFR Parts 30, 40, 50, 70, 75 and 150 will require certain licensees who are authorized to possess at any one time and location Special Nuclear Material (SNM) in a quantity totaling more than 350 grams of contained uranium 235, uranium 233, or plutonium, to report SNM received, produced, possessed, transferred, consumed, disposed of or lost on Form 742. The revision to Form DOE/NRC 742 is five new data elements: (1) DOE/NRC 740M attached, indicates whether a Concise Note is attached; (2) From Other Materials, indicates increases resulting from the introduction of another material into the material balance being reported; (3) Degradation of Other Materials, indicates decreases resulting from the introduction of other material into the material balance being reported or the amount of radioactive decay; (4) Inventory Difference, formerly Material Unaccounted For; and (5) Bias Adjustment, quantity of material which should be added to or subtracted from the inventory difference quantity in Item 77 to produce the best estimate of an unbiased inventory difference. The NRC estimates approximately 300 licenses will be required to file Form 742 and that the burden will average 20 minutes per report.

The NRC requests clearance of a new Form DOE/NRC 742C, Physical Inventory Listing. The NRC in accordance with 10 CFR Parts 30, 40, 50, 70, 75 and 150 will require certain licensees who are authorized to possess at any one time and location Special Nuclear Material (SNM) to report such physical inventory on Form 742C. The form 742C is required to be completed and attached to each Material Balance Report submitted. The Form 742C lists by batch name and other identifying data, all nuclear material on hand at the time of the physical inventory. The NRC estimates that approximately 207 licensees will be required to file Form 742C two times per year and that the burden for preparation of each report will average 8 hours.

The NRC requests clearance of a new, single-time, voluntary survey on release of radioactive material into the environment. The survey will collect data from licensees (medical, research and academic institutions) on their total release of radioactive materials to air and sanitary sewage systems for the year 1979. In order to implement the National Environmental Policy Act (NEPA) NRC is considering revising 10 CFR Part 51 (see Proposed Rule, Federal Register, March 3, 1980) to require the preparation of environmental reassessments for actions previously excluded from NEPA review (i.e., certain material licensee issuances). The data will be used to document the magnitude of releases of radioactive material from licensees and thus aid in NRC's determination of the types of material licenses for which categorical exclusions from environmental assessment might be established. The NRC estimates that respondents will number approximately 2,500 and that reporting burden will average 30 minutes per survey questionnaire prepared.

Norman F. Heyl,

*Regulatory Reports Review Officer.*

[FR Doc. 80-25291 Filed 8-19-80; 8:45 am]

BILLING CODE 1610-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of the Land Management

[INT DES 80-52]

### Alaska Outer Continental Shelf Oil and Gas Lease Sale; Availability of Draft Environmental Statement and Locations and Dates of Public Hearings Regarding Proposed Oil and Gas Lease Sale No. 60

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental

statement relating to a proposed Outer Continental Shelf (OCS) oil and gas lease sale of 153 tracts consisting of 349,917 hectares (864,646 acres) of submerged Federal land in the Lower Cook Inlet/Shelikof Strait Region of Alaska.

Single copies of the draft environmental statement can be obtained from the Office of the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510 and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240. Copies of the draft statement will also be available for review in the following public libraries in Alaska: Alaska Federation of Natives, 670 W. Fireweed Lane, Anchorage 99501; Department of Interior, Alaska Resources Library, 733 W. 4th Avenue, Anchorage 99501; Kenai Community Library, Box 157, Kenai 99611; North Star Borough Library, Fairbanks 99701; University of Alaska, Institute of Economics and Government Research Library, Fairbanks 99801; Z. J. Loussac Public Library, 427 F Street, Anchorage 99501; Alaska State Library, Juneau 99811; Bureau of Indian Affairs School Library, Elim 99739; Department of Defense, Army Corps of Engineers Library, Anchorage 99510; Department of Interior—Bureau of Mines Library, AF—F.O. Center, P.O. Box 550, Juneau 99802; Ketchikan 99901; Seldovia Public Library, Seldovia 99663; University of Alaska—Juneau Library, P.O. Box 1447, Juneau 99802; Anchor Point Public Library, Anchor Point 99556; Cordova Public Libraruy, Cordova 99574; Elim Learning Center, Elim 99739; Haines Public Library, Haines 99827; Homer Public Library, Homer 99603; Juneau Memorial Library, Douglas Public Library, 114 W 4th Street, Juneau 99824; Ketchikan Public Library, 629 Dock Street, Ketchikan 99901; Kodiak Public Library Association, Inc., Kodiak 99615; Metlakatla Extension Center, Metlakatla 99926; Petersburg Extension Center, Petersburg 99833; Seward Community Library, Seward 99664; Sitka Community Library, Sitka 99835; University of Alaska—Anchorage Library, 3211 Providence Drive, Anchorage 99504; University of Alaska, Elmer E. Rasmusson Library, Fairbanks 99701; Wrangell Extension Center, Wrangell 99929.

In accordance with 43 CFR 3314.1, public hearings on the draft statment have been scheduled as follows:

October 14, 1980, Elks Hall, Homer, Alaska, 3:00 p.m. to 9:00 p.m.

October 15, 1980, Borough Assembly Chambers, Kodiak, Alaska, 1:00 p.m. to 9:00 p.m.

October 16, 1980, Alaska OCS Office, Conference Room, Anchorage, Alaska, 10:00 a.m. to 4:00 p.m.

The hearings will provide the Secretary of the Interior with information from government agencies, public and private groups and individual citizens, to help evaluate the potential effects of the proposed offering. Comments are solicited concerning effects of exploration, development and production resulting from the proposed sale on marine, cultural, recreational and other resources of the Cook Inlet/Shelikof Strait Region.

Interested individuals, representatives of organizations, and public officials wishing to testify at the public hearing are requested to contact the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, at the above address by 4:00 p.m., October 7, 1980. Written comments from those unable to attend the hearing also should be addressed to the Manager, Alaska Outer Continental Shelf, Bureau of Land Management at the above address. The Bureau will accept written testimony and comments on the draft evironmental statement until 4:00 p.m., October 24, 1980. This will allow those unable to testify at the hearing to make their views known, and those presenting oral testimony to submit supplemental materials. Oral statements should be limited to ten (10) minutes unless prior arrangements for longer presentations are made through the Alaska OCS Office. Oral statments may be supplemented, however, by a more complete written statement which may be submitted to a hearing official at the time of the presentation or by mail to be received at any time prior to 4:00 p.m., October 24, 1980. To the extent that time is available after presentation of oral statement by those who have given advance notice, others present will be given an opportunity to be heard.

After all testimony and comments have been received and considered, a final environmental statement will be prepared.

Arnold E. Petty,

*Acting Associate Director, Bureau of Land Management.*

Approved:

James H. Rathlesberger,

*Special Assistant to Assistant Secretary of the Interior.*

[FR Doc. 80-25275 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

## Bureau of Land Management

### Multiple Use Advisory Council Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Prineville District Multiple Use Advisory Council will be held on Thursday, Sept. 25, 1980 at 10 a.m., at the Bureau of Land Management Office, 185 E. 4th St., Prineville, OR 97754.

Agenda for the meeting will include:

1. Introduction and biographical sketch of members;
2. Discussion of the function of the Council;
3. Briefing and discussion of Prineville District programs by resource areas, to include, but not be limited to the Wilderness Study Area Proposals, the Brothers Environmental Statement and land use planning;
4. Current sensitive issues;
5. Election of Chairperson and Vice Chairperson;
6. Establishment of committees;
7. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by Sept. 19, 1980. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty days following the meeting.

Paul W. Arrasmith,

*District Manager.*

August 10, 1980.

[FR Doc. 80-25330 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 55322]

### Wyoming; Order Providing for Opening of Public Lands

August 12, 1980.

1. In an exchange of lands made under the provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1976), the following described lands have been reconveyed to the United States:

Sixth Principal Meridian, Wyoming

T. 36 N., R. 110 W.
Sec. 18, E½SW¼SE¼,
Except those lands conveyed by Warranty Deed to the Wyoming State Highway Commission recorded at page 225 of book 16 of deed records, Sublette County, Wyoming.

The area described aggregates 17.62 acres.

2. The lands are located in Sublette County, about 10 miles north of the town of Cora. The topography is rolling foothills. Soils are fair and presently supports sagebrush and some forage production.

3. At 10 a.m. on September 22, 1980 the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m. on September 22, 1980, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been and will continue to be open to the U.S. Mining Laws and applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Cheyenne, Wyoming 82001.

Harold G. Stinchcomb,

*Chief, Branch of Lands and Minerals Operations*

[FR Doc. 80-25340 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

## Baker District Advisory Council; Meeting

Notice is hereby given that the Baker District Advisory Council will convene its first meeting at 9:00 a.m., Tuesday, September 16, 1980, in the Conference Room on the second floor of the Federal Building, Baker, Oregon.

The egenda for the meeting includes: Elect a Chairperson and Vice Chairperson; review purpose, objectives and functions of the Council; adopt rules of Council procedure; review BLM's mission and responsibilities; review status of the Ironside Grazing Environmental Impact Statement and Baker Resource Area Management Framework Plan; review the Bureau's Wilderness program and ORV land use designations.

The second meeting will be held on October 16, 1980, beginning at 7:00 a.m. and will consist of a field tour to look at and discuss specific management issues within the Baker Resource Area. The Ironside Environmental Impact Statement and Baker Management Framework Plan will guide the day's agenda. Members of the public wishing to participate on the field trip are to bring their own transportation and a lunch. Attendees are to meet in the parking lot at the rear of the Federal Building, Baker, Oregon.

Persons wishing to make oral or written statements at either meeting should so advise the District Manager at least 24 hours prior to the meeting. Presentations are to be made in writing and copies filed with the Council. Written statements for consideration by the Council should be sent to the District Manager, Bureau of Land Management, P.O. Box 987, Baker, Oregon 97814.

Dated: August 7, 1980.

Gordon R. Staker,

*District Manager,*

[FR Doc. 80-25293 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

## Lakeview District Advisory Council; Meeting

Notice is hereby given, in accordance with Public Law 94-579 and 43 CFR Part 1780, that a meeting of the Lakeview District Multiple use Advisory Council will be held on Tuesday, September 16, 1980 at 9:00 a.m. at the Bureau of Land Management Office, 1000 South Ninth Street, Lakeview, Oregon 97630. The meeting is open to the public.

Agenda for the meeting will include:

(1) Introduction of individual members.

(2) Organization of the council.

(3) Discussion of the function of the council.

(4) Briefing and discussions on the current status of the MFP in preparation for the Lakeview E.I.S.

(5) Arrangements and agenda for next meeting.

(6) Public comments.

Summary minutes of the meeting will be kept in the Lakeview District Office and will be available for public inspection and reproduction during regular business hours within 30 days after the meeting.

Richard A. Gerity.

*District Manager, Lakeview District Office.*

August 7, 1980.

[FR Doc. 80-25294 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

## Public Land in Yamhill County, Oreg.; Realty Action—Noncompetitive Sale

August 7, 1980.

The following described land has been examined and identified as suitable for transfer out of Federal ownership by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750-1; 43 U.S.C. 1713) at not less than the fair market value:

**Willamette Meridian, Oregon**

T. 3 S., R. 6 W.

Sec. 8, metes and bounds within the S1/2NE1/4, N1/2SE1/4

Containing 5.03 acres

The metes and bounds description is too lengthy for inclusion in this notice but anyone requesting the description will be furnished a copy.

The above-described land is being offered by direct sale to Willamette Industries, Inc., at the appraised fair market value of $4,300.00. Sale will not occur until at least 60 days have lasped from the date of this notice.

The land was acquired by the United States in 1958, as part of a larger parcel, for the construction of the Nestucca Access Road. Failure of the Meadow Lake Dam in the winter of 1962-63 forced the relocation of a segment of the road to the south side of the Nestucca River. The above-described land contains the abandoned road segment.

Sale of the land is in the public interest as the land is difficult and uneconomic to manage as part of the public lands due to its small size and narrow configuration. The land is no longer required for roadway purposes or any other Federal purposes.

The highest and best use of the land is for the commercial production of timber. Willamette Industries owns the surrounding land which is under management for timber production. Direct sale to Willamete Industries is justified as sale to another party would result in a land ownership pattern that would conflict with the county comprehensive plan and zoning.

The direct sale has been discussed with county officials and state agencies. Comments received indicates the sale is consistent with local plans, programs and objectives.

The patent, when issued, will contain a reservation to the United States for rights-of-way for ditches or canals under the Act of August 30, 1890.

The mineral estate is not in Federal ownership.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public comments, is available for review at the Salem District Office, P.O. Box 3227 (3550 Liberty Road S.), Salem, OR 97302.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Secretary of the Interior (LLM-320), Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become a final

determination of the Department of the Interior.

John D. Evans,

*Acting District Manager.*

[FR Doc. 80-25297 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-84-M

## Fish and Wildlife Service

### Availability for a Final Environmental Impact Statement on a Renewable Natural Resources Management Plan for Sheldon National Wildlife Refuge, Nevada

**AGENCY:** Fish and Wildlife Service (FWS), Intertior.

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public that a Final Environmental Impact Statement on a Renewable Natural Resources Management Plan for Sheldon National Wildlife Refuge is available for public review. On or before September 19, 1980, FWS will issue a Record of Decision on the proposed action which will be made available to the public according to National Environmental Policy Act (NEPA) Regulations (40 CFR 1506.6).

**ADDRESSES:** Further comments should be addressed to: R. Kahler Martinson, Regional Director, U.S. Fish and Wildlife Service, Region 1, Lloyd 500 Bldg., Suite 1552, 500 N.E. Multnomah St., Portland, OR 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Blayne Graves, Senior Staff Specialist, Refuges and Wildlife Resources, Region 1, U.S. Fish and Wildlife Service, Lloyd 500 Bldg., Suite 1552, 500 N.E. Mulnomah St., Portland, OR 97232. Individuals wishing copies of this EIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

**SUPPLEMENTARY INFORMATION:** Sole legal responsibility for managing the Sheldon National Wildlife Refuge was transferred to the U.S. Fish and Wildlife Service (FWS) in February 1976. Prior to that time, the area had been jointly administered with the U.S. Bureau of Land Management (BLM), and sustained heavy grazing by feral horses and burros, and domestic livestock under guidelines established by the Taylor Grazing Act of 1936. Becuase FWS administers National Wildlife Refuges under different legal authorities than BLM administers land under its jurisdiction, a resource management plan reflecting the FWS wildlife mission was prepared for Sheldon. The primary purpose of this plan is to provide habitat for a diversity of native plant and animal species.

Specifics of the proposed plan include: an intensively managed grazing program on about 367,000 acres, designed to manipulate the vegetation to enhance its value to wildlife; construction of gates, cattle guards and approximately 70 miles of interior fence to control livestock movements; development of springs and water reservoirs to provide wildlife water, and disperse cattle; management of a special 197,000-acre area designated because of its fragile soils, high value to bighorn sheep, reptiles, amphibians, plant species of special concern, and importance as winter range for antelope and mule deer; and special management emphasis upon sensitive habits (e.g., springs, meadows, streams, riparian strips, aspen groves, and snow pockets).

Effects of the proposed action were anaylzed. Antelope, mule deer, bighorn sheep and sage grouse would be expected to benefit. For other wildlife species, there was insufficient information to determine effects. As population data is accumulated over time, the effects of the grazing program on many of these native populations should become better understood, providing the FWS a basis for adjusting the grazing program as necessary.

The effects analysis also indicates that deliberate manipulation of vegetation would be expected to result in beneficial effects on vegetative condition, vegetative vigor and watershed values (such as soil erosion and water quality).

The economic analysis indicates that the FWS preferred alternative would reduce present AUM usage of permittees. The reduction would range from 25% the second year to 3% the fifth year, and would have no significant economic impact. Over the long term, if the vegetation responds as expected, there would be more AUM's available for wildlife *and* possibly cattle and thus, conceivably, the grazing alternatives could have long-term beneficial economic effects for permittees.

The FWS considered five other alternatives to the proposed action. The first would involve deliberate manipulation of vegetation, but management tools would be limited to prescribed burns, herbicides and mechanical treatments of vegetation. The second alternative would eliminate manipulation of vegetation by any means, on the assumption that natural processes would constitute the best means for restoring range vegetation. The third alternative would continue past management practices, while a fourth alternative would involve implementation of the FWS grazing program—but with elimination of feral horses and burros. Finally, a prescribed grazing alternative would only allow grazing where a positive need or benefit to wildlife could be clearly documented. Unlike the preferred alternative, grazing would not be allowed on a secondary basis.

Final review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

William H. Meyer,

*Acting Regional Director.*

August 14, 1980.

[FR Doc. 80-25285 Filed 8-19-80; 8:45 am]

BILLING CODE 4310-55-M

## INTERSTATE COMMERCE COMMISSION

### Washington; Long- and Short-Haul Application for Relief (Formerly Fourth Section Application)

August 14, 1980.

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 September 4, 1980.

No. 43856, Southwestern Freight Bureau, Agent (No. B–87), rates on common salt, in carloads, from or to Southwestern stations, on the one hand, and stations in Illinois Freight, Northern and Western Trunk Line Territories, on the other, as published in Supplement 71 to its Tariff ICC SWFB 2006–K, to become effective September 12, 1980. Grounds for relief—revised rate structure.

By the Commission.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-25280 Filed 8-19-80; 8:45 am]

BILLING CODE 7035-01-M

### Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any

application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

FINDINGS:

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

**Volume No. OP1-015**

Decided: Aug. 13, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 200 (Sub-482F), filed August 7, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting (1) *air cleaners, filters, and mufflers,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above, between points in Adair and Livingston Counties, MO, and Adams and Lee Counties, IL, on the one hand, and, on the other, points in the U.S.

MC 2900 (Sub-428F), filed August 7, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408-R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting (1) *lumber, building materials, metal articles, plastic articles, rubber articles, containers, paper and paper products, automotive parts, machines, machine parts, chemicals, photographic materials, electrical appliances and equipment, parts for electrical appliances and equipment, medicines, toilet preparations, cleaning compounds, ore products, petroleum products, and beer* (except commodities in bulk, and those requiring special equipment), between Chicago, IL, Minneapolis, MN, Kansas City, MO, Omaha, NE, Oklahoma City, OK, Dallas and Houston, TX, Denver, CO, and Cheyenne, WY, on the one hand, and, on the other, points in AZ, CA, NV, OR, UT, and WA, and (2) *electrical appliances and equipment, parts for electrical appliances and equipment, lumber, machines, machine parts, metal articles, plastic articles, and rubber articles* (except commodities in bulk, and those requiring special equipment), between points in AZ, CA, CO, NV, OR, UT, and WA.

MC 29910 (Sub-281F), filed July 29, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th St., Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Ave., Fort Smith, AR 72902. (1) Over regular routes, Transporting (A) *general commodities* (except those of unusual value, commodities in bulk, and those requiring special equipment), (1) between Denver and Fort Garland, CO, from Denver over U.S. Hwy 85 to Walsenburg, CO, then over U.S. Hwy 160 to Fort Garland, CO, and return over the same route, serving all intermediate points; (2) between junction U.S. Hwy 85 and CO Hwy 393 and junction U.S. Hwy 85 and CO Hwy 105, over relocated U.S. Hwy 85, as an alternate route for operating convenience only, serving no intermediate points; (3) between Pueblo and Leadville, CO, from Pueblo over U.S. Hwy 50 to Salida, CO, then over CO Hwy 291 to junction U.S. Hwy 285, then over U.S. Hwy 285 to junction U.S. Hwy 24, then over U.S. Hwy 24 to Leadville, CO, and return over the same route, serving all intermediate points; (4) between South Fork and Durango, CO, over U.S. Hwy 160, serving all intermediate points, and the off-route point of Ignacio, CO; (5) between Wheeler and Dowd, CO, over U.S. Hwy 6, serving no intermediate points; (6) between junction CO Hwy 115 and U.S. Hwy 85, near Colorado Springs, CO, and junction CO Hwy 115 and U.S. Hwy 50, near Florence, CO, over CO Hwy 115, serving no intermediate points; (7) between junction CO Hwys 120 and 115 near Penrose, CO, and junction CO Hwy 120 and U.S. Hwy 50 near Canon City, CO, over CO Hwy 120, serving no intermediate points; (8) between Denver, CO, and Farmington, NM, from Denver over U.S. Hwy 6 to Wheeler, CO, then over CO Hwy 91 to Leadville, CO, then over U.S. Hwy 24 to Grand Junction, CO, then over U.S. Hwy 50 to Montrose, CO, then over U.S. Hwy 550 to Farmington, and return over the same route, serving all intermediate points between Leadville and Farmington; (9) between Colorado Springs and Leadville, CO, over U.S. Hwy 24, serving all intermediate points; (10) between Denver and Creede, CO, from Denver over U.S. Hwy 285 to junction CO Hwy 291, then over CO Hwy 291 to Salida, CO, then over U.S. Hwy 50 to junction U.S. Hwy 285, then over U.S. Hwy 285 and CO Hwy 17 to Monte Vista, CO (also from junction U.S. Hwy 285 and CO Hwy 17 over CO Hwy 17 to Alamosa, CO, then over U.S. Hwy 160 to Monte Vista), then over U.S. Hwy 160 to junction CO Hwy 149, then over CO Hwy 149 to Creede, and return over the same route, serving the intermediate points of Salida, CO, and those between Salida and Creede, and the off-route points on CO Hwy 112 between Hooper and Del Norte, CO; (11) between Salida and Montrose, CO, over U.S. Hwy 50, serving all intermediate points; (12) between Delta and Somerset, CO, from Delta over CO Hwy 92 to Hotchkiss, CO, then over CO Hwy 133 to Somerset, CO, and return over the same route, serving all intermediate points; (13) between Cortez and Durango, CO, over U.S. Hwy 160, serving the intermediate points of Mancos and Hesperus, CO; (14) between Denver and Salida, CO, from Denver over U.S. Hwy 85 to Pueblo, CO, then over U.S. Hwy 50 to Salida, and return over the same route, serving all intermediate points and the off-route points of Fort Logan, Louviers, Camp Carson, and Minnequa, CO; (15) between Fort Garland and Del Norte, CO, over U.S. Hwy 160, serving all intermediate points, and serving the off-route point of Center; CO; (16) between

Alamosa and Antonito, CO, over U.S. Hwy 285, serving all intermediate points and the off-route points of Capulin, Sanford, and Manassa, CO; (B) *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) serving the facilities of the United States Atomic Energy Plant, at or near Marshall, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations to and from Denver, CO; (2) between Denver and Canon City, CO, from Denver over U.S. Hwy 85 to Pueblo, CO, then over U.S. Hwy 50 to Canon City, and return over the same route, serving all intermediate points; (3) between junction CO Hwy 120 and U.S. Hwy 50 and Canon City, CO, over CO Hwy 120, serving the intermediate points of Concrete, Portland, and Florence, CO, and the off-route points of Wetmore, Coal Creek, Rockvale, and Chandler, CO; (4) between junction CO Hwys 267 and 120, and junction CO Hwy 267 and U.S. Hwy 50, over CO Hwy 267, serving no intermediate points, but serving junction CO Hwys 267 and 120 for the purpose of joinder only;

(5) between Colorado Springs, CO, and junction CO Hwy 115 and U.S. Hwy 50, over CO Hwy 115, serving the intermediate point of Penrose, CO; (6) between junction CO Hwy 115 and U.S. Hwy 50, and junction CO Hwys 115 and 120 near Florence, CO, over CO Hwy 115, serving no intermediate points, but serving the junction of CO Hwys 115 and 120 for the purpose of joinder only; (7) between Cortez and McElmo Canyon, CO, from Cortez over U.S. Hwy 666 to junction unnumbered county road, then over unnumbered county road to McElmo Canyon, and return over the same route, serving all intermediate points; (8) between Pandora, CO, and junction CO Hwy 62 and U.S. Hwy 550 at or near Ridgeway, CO, from Pandora over CO Hwy 108 to junction CO Hwy 145, then over CO Hwy 145 to Placerville, CO, then over CO Hwy 62 to junction U.S. Hwy 550, and return over the same route, serving no intermediate points, but serving junction CO Hwy 62 and U.S. Hwy 550 for the purpose of joinder only; (9) serving the facilities of Glen L. Martin Plant, near Waterton, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations to and from Denver, CO; (10) between Grand Valley, CO, and the facilities of The Union Oil Company, at Parachute Creek, CO, over an unnumbered county road, serving all intermediate points; (11) serving the Navajo Dam Site near Blanco, NM, and points in Rio Arriba County, NM, as off-route points in connection with applicant's regular-route operations between Durango, CO, and Farmington, NM; (12) between Somerset, CO, and the Paonia Dam, CO, near junction CO Hwy 133 and 135, from Somerset over CO Hwy 135 to junction unnumbered Hwy, then over unnumbered Hwy to the Paonia Dam, and return over the same route, serving no intermediate points; (13) serving the Missile Launching Sites, at or near Lowry Bombing and Gunnery Range, CO, and Elizabeth, CO, as off-route points in connection with applicant's otherwise authorized regular-route operations to and from Denver, CO; (14) between the facilities of the Standard Metal Corporation, near Silverton, CO, and Montrose, CO, from the facilities of the Standard Metal Corporation over CO Hwy 110 to Silverton, then over U.S. Hwy 550 to Montrose, and return over the same route, serving no intermediate points; (15) serving the facilities of the Four Corners Electric Generating Plant and Dam, near Fruitland, NM, as an off-route point in connection with applicant's otherwise authorized regular-route operations; (16) serving the Lemon Dam on the Florida River, near Durango, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations; (17) between Provo and Park City, UT, from Provo over U.S. Hwy 189 to Heber, UT, then over U.S. Hwy 40 to junction unnumbered Hwy, then over unnumbered Hwy to Park City, UT, and return over the same route, serving all intermediate points and the off-route points of Midway, Hot Pots, and Center Creek, UT, (18) between Orem, UT, and junction UT Hwy 52 and U.S. Hwy 189, over UT Hwy 52, serving all intermediate points, and the off-route points of Midway, Hot Pots, and Center Creek, UT; (19) between Salt Lake City, UT, and junction U.S. Hwy 40 and unnumbered Hwy (formerly UT Hwy 6), near Park City, UT, over U.S. Hwy 40, serving all intermediate points; (20) between Salt Lake City and Price, UT, from Salt Lake City over U.S. Hwy 91 to Spanish Fork, UT, then over U.S. Hwy 6 to Price, and return over the same route, serving all intermediate points, and the off-route points of Kenilworth, Peerless, Spring Canyon, Standardville, Rains, Latuda, and Mutual, UT; (21) serving Storrs, UT, and the facilities of the Carbon Dioxide Plant, near Wellington, UT, as off-route points in connection with applicant's otherwise authorized regular route operations; (22) between Spanish Fork and Marysvale, UT, from Spanish Fork over U.S. Hwy 91 to Nephi, UT, then over UT Hwy 11 to junction U.S. Hwy 89, then over U.S. Hwy 89 to Marysvale, UT, and return over the same route, serving all intermediate points, and the off-route points of Spring City, Glenwood, Monroe, Mayfield, Austin, Wales, Venice, Annabella, Fairview, and Mt. Pleasant, UT; (23) between Pleasant Grove and Provo, UT, over UT Hwy 114, serving all intermediate points, and the off-route point of the Provo Airport, UT, (24) between Nephi and Gunnison, UT, from Nephi over U.S. Hwy 91 to junction UT Hwy 28, then over UT Hwy 28 to Gunnison, and return over the same route, serving all intermediate points; (25) between Price and Grand Junction, CO, over U.S. Hwy 50, serving all intermediate points and all off-route points within 10 miles of the indicated portion of the specified Hwy (except Sunnyside, Sunnydale, Columbia, Dragerton, and Horse Canyon, CO,

(26) between Springville and Emery, UT, from Springville over alternate U.S. Hwy 50 to junction U.S. Hwy 50, then over U.S. Hwy 50 to Price, UT, then over UT Hwy 10 to Emery, and return over the same route, serving all intermediate points between Springville and Price, and the off-route points within 5 miles of the portion of UT Hwy 10 specified; (27) between Glenwood Springs and Aspen, CO, from Glenwood Springs over CO Hwy 82 to junction CO Hwy 133, then over CO Hwy 133 to Carbondale, CO, then over unnumbered Hwy to junction CO Hwy 82, then over CO Hwy 82 to Aspen, and return over the same route, serving all intermediate points; (28) serving Joe's Valley Dam Site, near Orangeville, UT, as an off-route point in connection with applicant's otherwise authorized regular-route operations between Springville and Emery, UT; (29) between Pagosa Springs, CO, and Blanco, NM, from Pagosa Springs over U.S. Hwy 84 to junction NM Hwy 17, then over NM Hwy 17 to Blanco and return over the same route, serving all intermediate points, and serving off-route points in Archuleta County, CO, south and east of U.S. Hwy 160, and those in Rio Arriba County, NM, within 10 miles South of NM Hwy 17; (30) between Basalt and Meridith, CO, over unnumbered Hwy, serving all intermediate points and the off-route point of the Ruedi Dam and Reservoir Site, CO; (31) between Fort Garland, CO, and the facilities of Molybdenum Corporation of America, on NM Hwy 38, near Red River, NM, from Fort Garland over CO Hwy 159 to the CO–NM State line, then over NM Hwy 3 to Questa, NM, then over NM Hwy 38 to the facilities of Molybdenum Corporation of

America, and return over the same route, serving the intermediate point of San Luis, CO, for the purpose of joinder only; (32) between Alamosa and San Luis, CO, from Alamosa over U.S. Hwy 285 to junction CO Hwy 142, then over CO Hwy 142 to San Luis, and return over the same route, serving no intermediate points, but serving San Luis for purpose of joinder only; (33) between Alamosa and Fort Garland, CO, over U.S. Hwy 160, serving no intermediate points, but serving Fort Garland for purpose of joinder only; (34) between Leadville and Dowd, CO, from Leadville over CO Hwy 91 to junction U.S. Hwy 6, then over U.S. Hwy 6 to Dowd, and return over the same route, serving all intermediate points on U.S. Hwy 6 (except Wheeler Junction); (35) serving the facilities of Montezuma Plywood Company, near Cortez, CO, as an off-route point in connection with carrier's otherwise authorized regular-route operations to and from Cortez; (36) serving points in San Juan County, NM, (except points on U.S. Hwy 550 west of Farmington, NM), as off-route points in connection with applicant's otherwise authorized regular-route operations to and from Farmington, NM; (37) between Grand Junction, CO, and Price, UT, over U.S. Hwy 6, serving all intermediate points; (38) serving those in Pitkin and Lake Counties, CO, within 10 miles of Leadville, CO (except Climax and points in its Commercial Zone) as off-route points in connection with applicant's otherwise authorized regular-route operations; (39) between Antonito, CO, and Tres Piedras, NM, over U.S. Hwy 285, serving all intermediate points and the off-route points of No Agua, NM, the facilities of Johns-Manville Corp., and the facilities of United Perlite Corp., both near No Agua, NM; (40) serving Climax Co., as an off-route point in connection with applicant's otherwise authorized regular-route operations; (41) between Alamosa and Cortez, CO, over U.S. Hwy 160, serving the intermediate points of Hesperus and Mancos, CO, and the off-route point of the facilities of Montezuma Plywood Company, at or near Cortez, CO; (42) between Huntington and Fairview, UT, over U.S. Hwy 31, serving all intermediate points, and the facilities of Utah Power and Light Company, near Huntington, UT, as off-route points in connection with applicant's otherwise authorized regular-route operations at Huntington and Fairview, UT; (43) serving the facilities of Twin Lakes, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations; (44) between Salt Lake City and Ogden, UT, over U.S. Hwy 91, serving no intermediate points; (45) between Denver and Craig, CO, over U.S. Hwy 40, serving the intermediate points of Steamboat Springs, Milner, McGregor, Tow Creek, Bear River, Mount Harris, Hayden, Kremming, Hot Sulphur Springs, Granby, Fraser, West Portal, and Idaho Springs, CO, and the off-route points of Haybro, Oak Creek, Phippsburg, Yampa, and Toponas, CO; (46) serving the site of the Yampa Project, near Craig, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations; (47) serving the facilities used by Valley Camp of Utah, Inc., at or near Scofield, UT, as an off-route point in connection with applicant's otherwise authorized regular-route operations; (48) between Price and Sunnyside, UT, from Price over U.S. Hwy 50 to junction UT Hwy 123, then over UT Hwy 123 to Sunnyside, and return over the same route, serving all intermediate points, and the off-route points of Columbia and Horse Canyon, UT; (49) between Price and Mohrland, UT, from Price over UT Hwy 10 to junction UT Hwy 122, then over UT Hwy 122 to Mohrland, and return over the same route, serving all intermediate points; (50) between Farmington and Albuquerque, NM, from Farmington over NM Hwy 17 to junction NM Hwy 44 near Bloomfield, NM, then over NM Hwy 44 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Albuquerque, and return over the same route, serving no intermediate points; (51) between Denver, CO, and junction U.S. Hwy 6 and U.S. Hwy 40, near Idaho Springs, CO, over U.S. Hwy 6, serving junction U.S. Hwys 6 and 40 for the purpose of joinder only in connection with applicant's regular-route operations between Denver, CO, and Farmington, NM, as an alternate route for operating convenience only, and (52) between Denver, CO, and junction CO Hwy 185 and U.S. Hwy 85 near Castle Rock, CO, over CO Hwy 185, serving the junction of CO Hwy 185 and U.S. Hwy 85 for purpose of joinder only in connection with applicant's regular-route operations between Denver and Fort Garland, CO, over U.S. Hwys 85 and 160, as an alternate route for operating convenience only, and (C) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (1) serving the Provo Airport, near Provo, UT, as an off-route point in connection with applicant's otherwise authorized regular-route operations, and (2) between Springville, UT, and junction Alternate U.S. Hwy 50 (formerly U.S. Hwy 50) and U.S. Hwy 6, near Spanish Fork, UT, over Alternate U.S. Hwy 50, serving all intermediate points; and (III) over irregular routes, transporting (1) *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Aztec, Farmington, and Blanco, NM, and (2) *molybdenum concentrates,* in bulk, from the facilities of Molybdenum Corporation of America, near Red River, NM, to Alamosa, CO. Condition: To the extent that any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall expire 5 years from its date of issuance.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 121600 (Sub-13F), filed August 7, 1980. Applicant: AVERITT EXPRESS, INC., P.O. Box 7342, Nashville, TN 37210. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Knox, Overton, and Putnam Counties, TN, on the one hand, and, on the other, points in the U.S.

Note.—Applicant intends to tack the above requested authority with its existing regular route operations.

MC 146451 (Sub-34F), filed August 8, 1980. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle, N.E., Dothan, AL 36302. Representative: R. S. Richard, P.O. Box 2069, Montgomery, AL 36197. Transporting *appliances,* and *parts* for appliances, from the facilities of General Electric Company, at or near Norcross GA, to points in AL, FL, NC, and SC. Condition: As applicant is in common control with another regulated carrier, it must file an application for approval of the common control under the provisions of 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 151081 (Sub-1F), filed August 5, 1980. Applicant: PAUL DONALD AVERY, JR., d.b.a. DON AVERY TRUCKING, Rt. 2, Box 282A, Pacific, MO 63069. Representative: Paul Donald Avery, Jr. (same address as applicant). Transporting *cullet,* between points in the U.S., under continuing contract(s) with Circo Glass of St. Louis, MO.

MC 151371 (Sub-1F), filed August 8, 1980. Applicant: METALS TRANSPORT, INC., 528 South 108th St., West Allis, WI 53214. Representative: M. H. Dawes (same address as applicant). Transporting (1) *non-ferrous metals,*

*scrap metals, heat processing equipment, fabricated metal products, iron and steel articles, forest products, lumber, millwork, building supplies and hardware, material handling equipment, and water treatment equipment,* (2) *parts and accessories* for the commodities in (a), and (3) *materials, equipment and supplies* used in the facture and repair of the commodities in (1) and (2), between points in the U.S. (including AK, but excluding HI).

Note.—The purpose of this application is to convert applicant's existing contract carrier authority in MC-134730 and Subs 4, 5, 8, and 9 to common carrier authority, and also to convert to common carrier authority any permits issued in the following pending applications—MC 134730 (Subs-20, 21, 22, 23, 24, 25, 26, 27, and 28). Condition: Issuance of a certificate in this proceeding is subject (1) the coincidental cancellation, at applicant's written request, of its permits in MC 134730 and (Subs-4, 5, 8, and 9), and any permits issued in MC 134730 (Subs-20, 21, 22, 23, 24, 25, 26, 27, or 28), and (2) the withdrawal, at applicant's written request, of any of the proceedings still pending in MC 134730 (Subs-20, 21, 22, 23, 24, 25, 26, 27, and 28).

Volume No. OP2-018

Decided: August 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Carleton not participating.

MC 10343 (Sub-40F), filed July 18, 1980. Applicant: CHURCHILL TRUCK LINES, INC., U.S. Hwy. 36 West, P.O. Box 250, Chillicothe, MO 64601. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (I) Over regular routes: (1) between Indianapolis, and Terre Haute, IN over U.S. Hwy 40, serving Plainfield, Brazil, Seelyville, Stilesville, and Ben Davis, IN as intermediate points, and serving Mount Pleasant, Bellmore, and West Terre Haute, IN as off-route points, (2) between Terre Haute and Evansville, IN, over U.S. Hwy 41, serving Farmersburg, Fort Branch, Kings-Station, Haubstadt, Decker, Hazelton, Princeton, and Erskine, IN, and the facilities of the Warrick Works of the Aluminum Company of America, near Newburgh, IN, as off-route points, (3) between Terre Haute and Lafayette, IN: from Terre Haute over U.S. Hwy 41 to junction IN Hwy 47, then over IN Hwy 47 to Crawfordsville, then over IN Hwy 43 to Lafayette, and return over the same route, serving New Market, Marshall, Russellville, Milligan, and Judson, IN and Wabash River Ordance Works on IN Hwy 63 as off-route points, (4) between South Bend and Wabash, IN: from South Bend over U.S. Hwy 20 to junction IN Hwy 15, then over IN Hwy 15 to junction IN Hwy 114, then over IN Hwy 114 to North Manchester, then over IN Hwy 13 to Wabash, and return over the same route, serving Mishawaka, Elkhart, Goshen, Milford, Silver Lake, North Manchester, Urbana, and Warsaw, IN as intermediate points, and serving New Paris, Nappanee, Leesburg, and Claypool, IN as off-route points, (5) between Indianapolis and South Bend, IN over U.S. Hwy 31, serving Peru, Kokomo, Mexico, Rochester, Argos, Plymouth, Lapaz, and Lakeville, IN as intermediate points, and Macy, IN as an off-route point, (6) between Peru and Fort Wayne, IN, over U.S. Hwy 24, serving Largo and Huntington, IN as intermediate points, and serving Rich Valley, Wabash, Andrews, Roanoke, IN, and the facilities of the B.F. Goodrich Tire Company in Mailan Township (Allen County, IN) as off-route points, (7) between the intersection of the IN-IL State and U.S. Hwy 41 and Anderson, IN: from the instersection of the IN-IL State line and U.S. Hwy 41 over U.S. Hwy 41 to junctioin U.S. Hwy 6, then over Hwy 6 to junction IN Hwy 130, then over IN Hwy 130 to Valparaiso, then over U.S. Hwy 30 to junction U.S. Hwy 35, then over U.S. Hwy 35 to Logansport, then over U.S. Hwy 24 to Peru, then over IN Hwy 21 to junction IN Hwy 18, then over IN Hwy 18 to Marion, then over IN Hwy 9 to Anderson, and return over the same route, serving Hammond, Whiting, Gary, Hobart, Wheeler, Valparaiso, Knox, Bass Lake, Beardstown, Winamac, Royal Center, Wanatah, Logansport, Peru, Santa Fe, Amboy, Marion, and Alexandria, IN as intermediate points, and serving East Chicago, Indiana Harbor, Hanna, Star City, Thronhope, Portage, Monticello, and Converse, IN as off-route points, (8) between Marion and Muncie, IN: from Marion over IN Hwy 15 to Jonesboro, then over U.S. Hwy 35 to Muncie, and return over the same route, serving Jonesboro, IN as intermediate point, and serving Gas City, Upland, and Matthews, IN as off-route points; (9) between Terre Haute, IN and the intersection of the IN-IL State line and U.S. Hwy 150, over U.S. Hwy 150, (10) between Indianapolis, IN and junction U.S. Hwys 41 and 52, over U.S. Hwy 52, (11) between Vincennes and Muncie, IN, over IN Hwy 67, (13) between Lafayette and Warsaw, IN, over IN Hwy 25, (14) between Valparaiso, IN and the intersection of the IN-IL State line and U.S. Hwy 30, over U.S Hwy 30, (15) between Indianapolis and Logansport, IN: from Indianapolis over U.S. Hwy 421 to junction IN Hwy 29 near Boyleston, then over IN Hwy 29 to Logansport, and return over the same route, (16) between South Bend, IN and the intersection of the IN-IL State line and U.S. Hwy 20: from South Bend over IN Hwy 2 to junction U.S. Hwy 20 near Byron, IN, then over U.S. Hwy 20 to the intersection of the IN-IL State line and U.S. Hwy 20, and return over the same route, (17) serving the facilities of the B.F. Goodrich Company in Milan Township (Allen County, IN), as an off-route point in connection with carrier's regular-route operations to and from Fort Wayne, IN, (18) serving the facilities of the General Electric Company near Mount Vernon, IN, as an off-route point in connection with carrrier's regular-route operations to and from Evansville, IN, (19) between Louisville, KY and Evansville, IN: from Louisville over U.S. Hwy 150 to Prospect, IN, then over IN Hwy 56 to Haysville, IN, then over IN Hwy 45 to Dale, IN, then over U.S. Hwy 231 to junction U.S. Hwy 460, then over U.S. Hwy 460, to Evansville, and return over the same route, (20) between Jasper, IN and junction IN Hwys 64 and 145: from Jasper over IN Hwy 162 to junction IN Hwy 64, then over IN Hwy 64 to junction IN Hwy 145, and return over the same route, (21) between Dale, IN and junction IN Hwys 62 and 145, over IN Hwy 62, serving Siberia, IN as off-route point, (22) between junction IN Hwys 545 and 62 near Bradley, IN and Owensboro, KY: from junction IN Hwys 545 and 62 over IN Hwy 545 to junction IN Hwy 66, then over IN Hwy 66 to junction U.S. Hwy 231, then over U.S. Hwy 231 to Owensboro, and return over the same route, serving no intermediate points, restricted against the transportation of traffic between Evansville, IN and Owensboro, KY (23) between Plymouth and Indianapolis, IN, over U.S. Hwy 31, (24) between Fort Wayne and Indianapolis, IN, over IN Hwy 37, serving Jonesboro, IN as an off-route point, (25) between Logansport and Rochester, IN, over IN Hwy 25, (26) between Marion and Indianapolis, IN: from Marion over IN Hwy 15 to junction U.S. Hwy 35, then over U.S. Hwy 35 to Muncie, then over IN Hwy 67 to Indianapolis, and return over the same route, serving Anderson, IN as an off route point, (27) between Fort Wayne and Plymouth, IN, over U.S. Hwy 30, (28) between Pittsburgh, PA and Chicago, IL: from Pittsburgh over PA Hwy 65 to Rochester, PA, then over PA Hwy 51 to the PA–OH State line, then over OH Hwy 14 to Salem, OH, then

over U.S. Hwy 62 to Canton, OH, then over U.S. Hwy 30 to junction U.S. Hwy 30N, then over U.S. Hwy 30N to Delphos, OH, then over U.S. Hwy 30 to Ft. Wayne, IN, then over U.S. Hwy 33 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Chicago, and return over the same route, serving Akron, Lima, Xenia, Cleveland, Toledo, Youngstown, and Columbus, OH, Werton and Wheeling, WV, New Castle and Erie, PA, Fort Wayne and Baer Field, IN, and points in the Chicago IL commercial zone, as defined by the Commission, as off-route points, (29) between Chicago, IL and Terre Haute, IN: (a) over U.S. Hwy 41, and (b) from Chicago over IL Hwy 1 to Goodenow, IL, then over IL Hwy 1 to Paris, IL, then over U.S. Hwy 150 to Terre Haute, and return over the same route, serving the facilities of the Southern Indiana Gas and Electric Company, near Yankeetown, IN, as an off-route point, (30) between Indianapolis, IN and Louisville, KY: from Indianapolis over IN Hwy 37 to Paoli, IN, then over U.S. Hwy 150 to Palmyra, IN, then over IN Hwy 135 to Corydon, IN, then over IN Hwy 62 to New Albany, IN, then across the Ohio River to Louisville, and return over the same route, (31) between Columbus and Terre Haute, IN: from Columbus over IN Hwy 46 to junction IN Hwy 59, then over IN Hwy 59 to Brazil, IN, then over U.S. Hwy 40 to Terre Haute, and return over the same route, (32) between Bloomington and Terre Haute, IN: from Bloomington over IN Hwy 45 to junction IN Hwy 54, then over IN Hwy 54 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Terre Haute, and return over the same route, (33) between Fort Wayne, IN and Chicago, IL: from Fort Wayne over U.S. Hwy 30 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Chicago, and return over the same route, (34) between Muncie and Fort Wayne, IN, over IN Hwy 3, (35) between Columbia City and Huntington, IN, over IN Hwy 9, (36) between Wabash and Warsaw, IN, over IN Hwy 15, (37) between Kokomo, IN and junction U.S. Hwy 35 and IN Hwy 15, over U.S. Hwy 35, (38) between Westfield and Noblesville, IN, over IN Hwy 32, (39) between Noblesville and Anderson, IN, over IN Hwy 32, (40) between Anderson, IN and junction unnumbered highway (formerly IN Hwy 232) and IN Hwy 67, over unnumbered highway (formerly IN Hwy 232), (41) between Columbus and Indianapolis, IN: from Columbus over U.S. Hwy 31A to junction U.S. Hwy 31, then over U.S. Hwy 31 to Indianapolis, and return over the same route, (42) between Vincennes and Prospect, IN, over U.S. Hwy 15, serving no intermediate points, and serving Vincennes for purposes of joinder only, (43) between Mitchell, IN and Louisville, KY: from Mitchell over IN Hwy 60 to junction Interstate Hwy 65, then over Interstate Hwy 65 to Louisville, and return over the same route, serving no intermediate points, and serving junction IN Hwy 60 and Interstate Hwy 65 for purposes of joinder only, (44) between junction IN Hwys 46 and 59 and Terre Haute, IN, over IN Hwy 46, (45) between Indianapolis, IN and Louisville, KY: from Indianapolis over U.S. Hwy 31 to Sellersburg, IN, then over U.S. Hwys 31E and 31W to Louisville, and return over the same route, (46) between Kentland, IN and junction U.S. Hwy 24 and IL Hwy 1, over U.S. Hwy 24, (47) between junction IL Hwys a and 119, and, junction IN Hwy 28 and U.S. Hwy 41: from junction IL Hwys 1 and 119 over IL Hwy 119 to the IL-IN State line, then over IN Hwy 28 to junction U.S. Hwy 41, and return over the same route, (48) between Vincennes and Indianapolis, IN, over IN Hwy 67, (49) between junction U.S. Hwy 41 and IN Hwy 57, and, Indianapolis, IN: from junction U.S. Hwy 41, and IN Hwy 57 over IN Hwy 57 to junction IN Hwy 67, then over IN Hwy 67 to Indianapolis, and return over the same route, (50) between Danville, IL and Indianapolis, IN, over U.S. Hwy 136, restricted against traffic (A) originating at Danville, IL destined to Indianapolis, IN, and (B) originating at Indianapolis, IN, and destined to Danville, IL, (51) between Corydon, IN and junction IN Hwy 145 and U.S. Hwy 460, over U.S. Hwy 460,

(52) serving the facilities of Eli Lilly and Company near Clinton, IN, as an off-route point in connection with carrier's otherwise authorized regular-route operations, (53) between Lawrenceville and Paris, IL, over IL Hwy 1, (54) between Chicago and Fairfield, IL: from Chicago over U.S. Hwy 34 to junction U.S. Hwy 45, then over U.S. Hwy 45 to Fairfield, and return over the same route, (55) between Danville and Lincoln, IL, over IL Hwy 10, (56) between Marshall and Vandalia, IL, over U.S. Hwy 40, (57) between Springfield, IL and junction U.S. Hwy 36 and IL Hwy 1, over U.S. Hwy 36, (58) between Lawrenceville and Sandoval, IL, over U.S. Hwy 50, (59) between junction IL Hwys 33 and 49, and, junction IL Hwy 49 and U.S. Hwy 45, over IL Hwy 49, (60) between Bloomington and Ashely, IL, over U.S. Hwy 51, (61) between Bloomington and Litchfield, IL, over U.S. Hwy 66, (62) between Mount Vernon, IL and junction IL Hwy 37 and U.S. Hwy 45, over IL Hwy 37, (63) between junction IL Hwys 10 and 48, and, junction IL Hwy 48 and U.S. Hwy 66, over IL Hwy 48, (64) between Clinton and Springfield, IL, over IL Hwy 54, (65) between Ashley and Fairfield, IL, over IL Hwy 15, (66) between Taylorville, IL and junction IL Hwy 104 and U.S. Hwy 66, over IL Hwy 104, (67) between Pana and Springfield, IL, over IL Hwy 29, (68) between Paris and Bloomington, IL, over U.S. Hwy 150, (69) between Bloomington and Chicago, IL, over U.S. Hwy 66, serving all intermediate points (except those in Will County, IL), (70) between Bloomington and Peoria, IL, over U.S. Hwy 150, (71) between Lincoln and Morton, IL, over IL Hwy 121, serving Morton for purposes of joinder only, (72) serving the facilities of American Cyanamid Co., at South River, MO as an off-route point in connection with carrier's regular-route operations, (73) between Quincy, IL and St. Louis, MO: (a) from Quincy over IL Hwy 96 to junction U.S. Hwy 36, then over U.S. Hwy 36 to Jacksonville, IL, then over U.S. Hwy 67 to junction unnumbered highway (formerly portion U.S. Hwy 67), then over unnumbered highway to junction IL Hwy 267, then over IL Hwy 267 to junction U.S. 67, then over U.S. Hwy 67 to Alton, IL, then over IL Hwy 3 to junction unnumbered highway (formerly portion U.S. Hwy 67A) then over unnumbered highway to junction IL Hwy 203, then over IL Hwy 203 to junction U.S. Hwy 40, then over U.S. Hwy 40 to St. Louis, and return over the same route, and (b) from Quincy over U.S. Hwy 24 to Taylor, MO, then over U.S. Hwy 61 to Wentzville, MO, then over Bypass U.S. Hwy 40 to junction MO Hwy 115, then over MO Hwy 115 to junction MO Hwy 180, then over MO Hwy 180 to St. Louis, and return over the same route, (74) between St. Louis, MO and Lawrenceville, IL: from St. Louis over U.S. Hwy 50 to junction unnumbered highway (formerly U.S. Hwy 50A) near Sumner, IL, then over unnumbered highway to Lawrenceville, and return over the same route, (75) between St. Louis, MO and Bloomington, IL: from St. Louis over Interstate Hwy 55 to junction IL Hwy 4, then over IL Hwy 4 to Staunton, IL, then over unnumbered highway to junction Interstate 55, then over Interstate Hwy 55 to Bloomington, and return over the same route, (76) between Springfield and Peoria, IL, over IL Hwy 29, (77) between Mason City and Danville, IL: from Mason City over IL Hwy 10 to Champain, then over U.S. Hwy 150 to Danville, and return over the same route, (78) between junction Interstate Hwy 55 and IL Hwy 48 and Decatur, IL, over IL Hwy 48, (79)

between St. Louis, MO and Marshall, IL: from St. Louis over U.S. Hwy 40 to junction unnumbered highway, then over unnumbered highway to junction U.S. Hwy 40, then over U.S. Hwy 40 to junction U.S. Hwy 40A, then over U.S. Hwy 40A to Mulberry Grove, IL, then over U.S. Hwy 40 to Marshall, and return over the same route, (80) between Jacksonville and Springfield, IL, over U.S. Hwy 36, (81) between Lawrenceville, IL and Vincennes, IN, over U.S. Hwy 50, (82) between Marshall, IL and Terre Haute, IN, over U.S. Hwy 40, (A) serving routes (10) through (16), (33) through (51), (71), and (80) through (82), as alternate routes for operating convenience only, serving no intermediate points (except as noted in routes (42), (43), and (71) above), and (B) serving all intermediate points in routes (2), (3), (9) through (21), (23) through (32), (53) through (70), and (73) through (79) above (except as noted in routes (54) and (69) above); and (II) over irregular routes: (1) between points in Marion County, IN, and (2) between Fort Wayne, IN, on the one hand, and, on the other, Ferguson, IN, and Baer Field Airport, IN.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-25281 Filed 8-19-80; 8:45 am]

BILLING CODE 7035-01-M

## Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

### Volume No. OPI-015

Decided: August 13, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 38481 (Sub-22F), filed August 6, 1980. Applicant: FARRUGGIO'S BRISTOL AND PHILADELPHIA AUTO EXPRESS, INC., 1419 Radcliffe St., Bristol, PA 19007. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 90870 (Sub-41F), filed August 6, 1980. Applicant: RIECHMANN ENTERPRISES, INC., Route 1, Box 1284, Granite City, IL 62040. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting *general commodities,* between Alhambra, Kuhn, Mont; and Marine, IL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor service for abandoned rail service.

MC 115931 (Sub-121F), filed August 8, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59806. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 151490F, filed August 8, 1980. Applicant: ARCHER COURIER SYSTEMS OF CHICAGO, INC., 517 South Jefferson St., Chicago, IL 60607. Representative: Lawrence Burstein, One World Trade Center, Suite 2373, New York, NY 10048. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 151491F, filed July 21, 1980. Applicant: BONDED MESSENGER SERVICE, INC., 418 North 27th St., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 161 West Wisconsin Ave., Suite 5170, Milwaukee, WI 53203. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

### Volume No. OP3-006

Decided: August 13, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 52914 (Sub-6F), filed August 1, 1980. Applicant: FITCHETT TRUCK LINES, INC., 3641 N. W. Front Ave., P.O. Box 10799, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Ave., Portland, OR 97210. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government between points in the U.S.

MC 126904 (Sub-39F), filed August 4, 1980. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 136545 (Sub-33F), filed July 30 1980. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 136605 (Sub-160F), filed August 4, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton, (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 140294 (Sub-16F), filed August 4, 1980. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 149385 (Sub-1F), filed August 1, 1980. Applicant: WHITE BROTHERS TRUCKING CO., a corporation, P.O. Box 96, Wasco, IL 60183. Representative: Leonard R. Kofkin, 39 S. La Salle St., Chicago, IL 60603. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 151464 filed August 1, 1980. Applicant: ARCHER MOTOR SERVICE, INC., 855 Avenue of the Americas, New York, NY 10001. Representative: Lawrence Burstein, One World Trade Center, Suite 2373, New York, NY 10048. Transporting *shipments weighting 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-25282 Filed 8-19-80; 8:45 am]

BILLING CODE 7035-01-M

## Motor Carrier Finance Applications; Decision-Notice

In FR Doc. 80-22950, published at page 50946, on Thursday, July 31, 1980, on page 50947, in the third column, in the second paragraph, in the first line, "H. HOYT McKAREM," should be corrected to read "MC-F-14338F, filed February 28, 1980. H. HOYT McKAREM,".

BILLING CODE: 1505-01-M

## Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

[Notice No. F-49]

The following applications were filed in region 1.

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway St., room 501, Boston, MA 02114.

MC 144496 (Sub-1-1TA), filed July 23, 1980. Applicant: ECKS TRUCKING, INC., 657 Pleasant Street, Norwood, MA 02063. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Contract carrier, irregular routes: *(1) Foodstuffs, lime juices, grenadine, cocktail mixes and (2) materials, equipment, and supplies used in the manufacture and distribution of the products named in number (1)* above (except commodities in bulk), between the facilities of Cadbury, Schwepps, U.S.A. Ltd., and Jefferson Bottling Co., Warwick, RI, and points in the U.S.A., except AL, HA, and RI. Supporting shipper: Cadbury, Schwepps, U.S.A. Ltd. or its subsidiary, Jefferson Bottling Co., 101 Jefferson Blvd., Warwick, RI 02888.

MC 151349 (Sub-1-1TA), filed July 23, 1980. Applicant: HINGHAM EXPRESS, INC., 349 Lincoln Street, Hingham, MA 22043. Representative: Jeffrey M. Aresty, Esq., Crossland & Aresty, Bay 305 Union Wharf, Boston, MA 02109. *General commodities in containers having a prior or subsequent movement by water or by rail (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between Boston, MA and its commercial zone and Providence, RI, and its commercial zone. Supporting shipper: J. F. Moran, Central Air Freight Terminal, Logan Airport, East Boston, MA 02128.

MC 151263 (Sub-1-1TA), filed July 24, 1980. Applicant: BARRINGTON HAULAGE COMPANY INCORPORATED, 300 Treble Cove Road, Billercia, MA 01862. Representative: James R. Barrington, 300 Treble Cove Road, Billerica, MA 01862. *General Commodities (Except Commodities Transported in Bulk Tank Vehicles)* between MA, CT, RI, ME, NH, VT, and points in the U.S. including AK. Supporting shipper(s): BTU, Bruce Engineering Corporation, Esquire Road, North Billerica, MA 01862; Plasma Coatings, Inc., 23 Rutledge Road, Waterbury, CT 06702; Sanborn Associates, Inc., 25 Commercial Drive, Wrentham, MA 02093.

MC 29934 (Sub-1-2TA), filed July 23, 1980. Applicant: LO BIONDO BROTHERS MOTOR EXPRESS, INC., P.O. Box 160, Bridgeton, NJ 08302. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Pet Food and materials, supplies and equipment used in the manufacture, distribution and sale of pet food.* Between the facilities of Franklin Foods Corporation, Norma, NJ on the one hand, and, on the other, points in NY, DE, MD, PA, VA, MA, CT, RI and DC. Supporting shipper: Franklin Foods Corporation, Landis Avenue, Norma, New Jersey 08347.

MC 147074 (Sub-1-10TA), filed July 23, 1980. Applicant; E Z FREIGHT LINES, 70 Gould Street, Bayonne, NJ 07002.

Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Binders, and materials and supplies* used in the manufacturing, sales, packaging and distribution thereof, except in bulk between Chicago, IL, on the one hand, and, on the other, points in the United States east of the Mississippi River. Supporting shipper: S. I. Jacobson, Inc., 1414 South Wabash Avenue, Chicago, IL 60605.

MC 144502 (Sub-1–1TA), filed July 24, 1980. Applicant: INTERMODAL FREIGHT SYSTEMS, INC., 144 Pennsylvania Avenue, P.O. Box 423, Kearny, NJ 07032. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and those which, because of size or weight, require the use of special equipment)* between points in and east of WI, IL, KY, TN and MS, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to transportation of shipments having a prior, subsequent or intermediate movement by rail in trailer on flat car or container on flat car service. Supporting shippers: There are 12 supporting shippers. Their statements may be examined at the Interstate Commerce Commission, Regional office at Boston, MA.

MC 146083 (Sub-1–2TA), filed July 23,1980. Applicant: AIRFREIGHT TRANSPORTATION CORPORATION OF NEW NEW JERSEY, 333 North Henry St., Brooklyn, NY 11222. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934.*Contract carrier:* irregular routes: *Such commodities as are dealt in or used by department stores (except foodstuffs and commodities in bulk),* Between the facilities of Lee Wards Creative Crafts, Inc., at or near Elgin, IL, on the one hand, and, on the other, points in CA, CT, CO, GA, KY, MA, NC SC, TX, and DC. Supporting shipper: Lee Wards Creative Crafts, Inc., 1200 St. Charles St., Elgin, IL 60120.

MC 151358 (Sub-1–1TA), filed July 24, 1980. Applicant: T K TRANSPORT, INC., 275 Central Street, Leominster, MA 01453. Representative: John A. Maiona, Esq., 294 Washington Street, Boston, MA 02108. Contract carrier, irregular routes: *(1) Finished plastic container products and raw materials for manufacture of plastic products,* from, to, or between Leominster, MA to CT, DE, FL, ME, MA, MD, MO, NJ, NY, NC, OH, PA, RI, SD, TX, VA; and *(2) Materials, equipment and supplies used in the manufacturing, production, installation, sale, and distribution* of the commodities named above under a continuing contract or contracts with North American Container Corporation, located in Leominster, MA. Supporting shipper: North America Container Corp., Leominster, MA 01453.

MC 151354 (Sub-1–1TA), filed July 23, 1980. Applicant: STEVEN FREIGHT SERVICE CO., INC., 16 Sturtevant Street, Somerville, MA 01245. Representative: Robert L. Cope, Esq., Suite 501, 1730 M Street, NW, Washington, DC 20036. Contract, irregular: *General Commodities (except household goods as defined by the Commission, and Classes A and B explosives),* between the commercial zone of Boston, MA, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, RI, VT, under continuing contract or contracts with Cam-Con Corporation. Supporting shipper: Cam-Con Corporation of Somerville, MA.

MC 145829 (Sub-1–10TA), filed July 23, 1980. Applicant: ETI CORP., P.O. Box 1, Keasbey, NJ 08832. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Contract carrier, irregular routes: *Such merchandise as is sold in department or retail chain stores,* between Cheswick, PA, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper(s): Action Industries, Inc., 460 Nixon Road, Cheswick, PA 15024.

MC 128798 (Sub-1–1TA), filed July 25, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Road, Larchmont, NY 10538. Representative: Larsh B. Mewhinney, Esq., Moore, Berson, Lifflander & Mewhinney, 555 Madison Avenue, New York, NY 10022. Contract carrier, irregular routes: *Paper and paper products, wood pulp, plastic and plastic products, except commodities in bulk, restricted to traffic originating at or destined to facilities owned, used, or operated by Georgia Pacific Corporation,* between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, and DC, under contract with Georgia Pacific Corporation. Supporting shipper: Georgia Pacific Corporation, Darien, CT.

MC 116371 (Sub-1–4TA), filed July 23, 1980. Applicant: LIQUID CARGO LINES LIMITED, P.O. Box 269, Clarkson, Ont., Canada L5J 2Y4. Representative: Miss Whilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Malt extract or malt syrup,* in bulk, in tank vehicles, from ports of entry on the U.S.-Canada International Boundary line in MI on the Detroit and St. Clair Rivers and in NY on the Niagara River to Villa Park, IL, restricted to traffic originating at the facilities of Ovaltine Food Products, Division Wander Limited at Petersborough, Ont. Supporting shipper: Ovaltine Food Products, Division Wander Limited, 1377 Lawrence Avenue, East, Don Mills, Ont., Canada M3A 3M4.

MC 84428 (Sub-1–3TA), filed July 25, 1980. Applicant: CHESTER JACKSON COMPANY, 475 Schuyler Avenue, Newark, NJ 07032. Representative: Charles J. Irwin, Esq., Irwin and Post, P.A., 744 Broad Street, Newark, NJ 07102. *Denatured wine,* in bulk, in sanitary stainless steel tank vehicles, from Edgewater and Kearny, NJ to Lynchburg, VA. Supporting shipper: Lever Brothers Company, 390 Park Avenue, New York, NY 10022.

MC 142603 (Sub-1–8TA), filed July 24, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Contract carrier, irregular routes: *Paper, Computing Machine Forms, Circulars, Books, Booklets, Leaflets, Pamphlets, Sheets, Price Lists, PLastic Binders and Envelopes,* between Clifton, NJ (Passaic County), on the one hand, and, on the other, all points in the United States, restricted to traffic originating at or destined to the facilities of Automatic Data Processing, Inc., under a continuing contract(s) with Automatic Data Processing, Inc. Supporting shipper: Automatic Data Processing, Inc., 405 Route 3, Clifton, NJ 07015.

MC 151356 (Sub-1–1TA) filed July 25, 1980. Applicant: THE BIRGE COMPANY, INC., 421 E. 16th Street, Paterson, NJ 07514. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Automotive products and parts* between New York Commercial Zone and Suffolk County, NY, on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting Shipper: Gibson Chemical & Oil Corp., 74 Mall Drive, Commack, NY 11725.

MC 151357 (Sub-1–1TA), filed July 24, 1980. Applicant: ANTHONY N. PRIZIO, d.b.a. FINAST TRANSPORTATION COMPANY, 22 Makepeace Street, Saugus, MA 01906. Reprentative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *General commodities, except classes A & B explosives, household goods as defined by the Commission, and commodities in bulk,* (1) between all points in MA, on the one hand, and, on the other, all points in CT, ME, NH, RI, VT, and the New York, NY Commercial Zone, and (2) between all points in the New York, NY Commercial Zone, on the one hand, and, on the other, all points in CT, ME,

NH, RI, and VT, and (3) between all points in RI, on the one hand, and, on the other, all points in CT, ME, NH, and VT, and (4) between all points in CT, on the one hand, and, on the other, all points in ME, NH, and VT. Supporting shipper(s): Dis-Con, Inc., 40 Constitution Road, Charlestown, MA 02129.

MC 84428 (Sub-1–4TA), filed July 25, 1980. Applicant: CHESTER JACKSON COMPANY, 475 Schuyler Avenue, Newark, NM 07032. Representative: Charles J. Irwin, Esq., Irwin and Post, P.A., 744 Broad Street, Newark, NJ 07102. *Aniline oil,* in bulk, in tank vehicles, from the plant site of American Cyanamid at Willow Island, W.VA. to the plant sites of American Cyanamid at Bound Brook and Linden, NJ. Supporting shipper: American Cyanamid, Berdan Avenue, Wayne, NJ 07470.

MC 135873 (Sub-1–1TA), filed August 7, 1980. Applicant: KSS TRANSPORTATION CORPORATION, P.O. Box 3052, North Brunswick, NJ 08402. Representative: Elaine M. Conway, 10 S. La Salle Street, Suite 1600, Chicago, IL 60603. Contract, irregular: *Paper, pulp or allied products* between points in the United States, moving under continuing contracts with Inland Container Corporation. Supporting shipper: Inland Container Corporation, P.O. Box 925, Indianapolis, In 46206.

MC 150751 (Sub-1–2TA), filed August 6, 1980. Applicant: HAROLD A. YOUNG, d.b.a., Young's Express, 21 Glenwood Avenue, Southbridge, MA 01550. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403. *Household applicances, household appliance parts and television sets,* from Providence County, RI to points in Massachusetts. Supporting shipper: Choquette & Co., Inc., One Washington Avenue, Providence, RI 02905.

MC 142603 (Sub-1–9TA), filed August 6, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Stephen J. Habash, 100 E. Broad Street, Columbus, OH 43215. Contract, irregular: (1) *Fabric (piece goods)* from Greensboro, Lowell, Kenansville, Lilesville, Farmville, Morgantown and Gastonia, NC; Rock Hill, Grace, and Union, SC; Scottsboro, AL; McComb, MS; Easton and Pine Grove, PA; Lawrence, MA; and McMinnville, TN; to the facilities of N. Edelson Sons Corporation located at Chicopee, MA; and Moulton, AL; (2) *Ladies' garments* from the facilities of N. Edelson Sons Corporation at Chicopee, MA to the facilities of K-Mart located at North Bergen, NJ. Under continuing contract(s) with N. Edelson Sons Corporation of New York, NY. Supporting shipper: N. Edelson Sons Corporation, 44 E. 32nd Street, New York, NY 10016.

MC 151473 (Sub-1–1TA), filed August 1, 1980. Applicant: THE B LINE, INC., 25 Adams Street, Braintree, MA 02184. Representative: James M. Burns, 1383 Main Street Suite 413, Springfield, MA 01103. Contract carrier, Irregular Routes: (1) *Bar, chain and motor oil and equipment, materials and supplies used in the manufacture, sale and distribution of such commodities* between points in CT, MA, ME, NH, NJ, NY, RI, and VT, and (2) *Automotive lubricants, anti-freeze and chemicals and equipment, materials and supplies used in the manufacture, sale and distribution of such commodities,* between points in CT, MA, ME, NH, NJ, NY, RI and VT, under a continuing contract(s) in (1) above with Admiral Petroleum, Inc., Kingston, MA and in (2) above with Commonwealth Chemical Corp., Lowell, MA. Supporting shipper(s): Admiral Petroleum, Inc., Joseph Street, Kingston, MA and Commonwealth Chemical Corp., 24 Date Street, Lowell, MA.

MC 111729 (Sub-1–7TA), filed August 4, 1980. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch, 333 New Hyde Park Road, New Hyde Park, NY 11042. *General commodities* (except articles of unusual value, Classes A and B explosives; household goods, as defined by the Commission, commodities in bulk and those requiring special equipment), *restricted against the transportation of packages or articles weighing in excess of 250 pounds,* between Hayward, CA, on the one hand, and, on the other, points in Idaho, Oregon and Washington. Supporting shipper: Shaklee Corporation, 1900 Powell Street, Emeryville, CA 94608.

MC 138073 (Sub-1–1TA), filed August 7, 1980. Applicant: BUF-AIR FREIGHT, INC., 495 Aero Drive, Cheektowaga, NY 15225. Representative: Robert D. Gunderman, Esq., Suite 710 Statler Building, Buffalo, NY 14202. *Printed matter,* from Bristol, CT to points in NY on and west of Interstate Highway 81. Supporting shipper: Newsweek, Inc. 444 Madison Avenue, New York, NY 10022.

MC 112627 (Sub-1–2TA), filed August 7, 1980. Applicant: OWENS BROS., INC., P.O. Box 247, Dansville, NY 14437. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. *Wine,* in cases, from Westfield, NY to points in IN, IL, MI, and KY. Supporting shipper: Mogen David Wine Corp., 85 Bourne Street, Westfield, NY 14787.

Mc 35882 (Sub-1–1 TA), filed August 6, 1980. Applicant: BRANDER BUS LINES, INC., 20 Slater Street, Rehoboth, MA 02769. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Passengers and their baggage, express and newspapers in the same vehicle with passengers,* between Bristol, RI and Kingston, NH. (1) From Bristol, RI over RI Hwy 136 to Junction Mt. Hope Bridge, then over Mt. Hope Bridge to Junction unnumbered Hwy, then over unnumbered Hwy to Junction RI Hwy 24, then over RI Hwy 24 to the RI/MA state line, then over MA Hwy 24 to Junction Interstate Hwy 195, then over Interstate Hwy 195 to Junction MA Hwy 88, then over MA Hwy 88 to Horseneck Beach, Junction MA Hwy 18, then over MA Hwy 18 to Junction MA Hwy 140, then over MA Hwy 140 to Junction MA Hwy 24, then over MA Hwy 24 to Junction Interstate Hwy 93, then over Interstate Hwy 93 to Junction MA Hwy 213, then over MA Hwy 213 to Junction MA Hwy 125, then over MA Hwy 125 to MA/NH State Line, then over NH Hwy 125 to Kingston, NH and return over same route, serving all intermediate points.(2) From Bristol, RI over RI Hwy 136 to Junction Mt. Hope Bridge, then over Mt. Hope Bridge to Junction unnumbered Hwy, then over over unnumbered Hwy to Junction RI Hwy 24, then over RI Hwy 24 to the RI/MA State Line, then over MA Hwy 24 to Junction Interstate Hwy 195, then over Interstate Hwy 195 to Junction MA Hwy 88, then over MA Hwy 88 to Junction MA Hwy 6, then over MA Hwy 6 to Junction MA Hwy 140, then over MA Hwy 140 to Junction MA Hwy 24, then over MA Hwy 24 to Junction Interstate Hwy 93, then over Interstate Hwy 93 to Junction MA Hwy 213, then over MA Hwy 213 to Junction Interstate Hwy 495, then over Interstate Hwy 495 to Junction MA Hwy 125, then over MA Hwy 125 to MA/NH State Line, then over NH Hwy 125 to Kingston. NH and return over same route, serving all intermediate points. Restriction: No passenger will be carried whose entire ride is between Bristol, RI and Westport, MA in (1) and (2) above. Supporting shipper(s): There are approximately 25 statements of support which may be examined at the ICC Regional Office at Boston, MA.

Note.—(1) Applicant requests authority to interline at Bristol, RI, New Bedford, MA, Boston, MA and Kingston, NH.

The following applications were filed in Region 3. Send protects to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA. 30357.

MC 95540 (Sub-3–14 TA), filed August 11, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). *Dairy products* from Green Bay, WI to MS and LA. Supporting shipper: Topco Associates, Inc., 7711 Gross Point Road, Skokie, IL 60077.

MC 107515 (Sub-3–49 TA), filed August 11, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Stoves, heaters, fireplace, equipment and cast iron cookware and lawn furnitures; and (2) materials, equipment and supplies used in the installation and sale of the commodities in (1) above* from facilities of Atlanta Stove Works, Inc., Birmingham AL and Atlanta, GA to points in CT, IL, IN, IA, KS, ME, MA, MI, MN, MO, NH, NJ, NY, OH, PA, TX, and WI. Supporting shipper: Atlanta Stove Works, Inc., 112 Krog St., N.E., Atlanta, GA 30307.

MC 121081 (Sub-3–4TA), Files August 11, 1980. Applicant: COLUMBUS MOTOR LINES, INC., P.O. Box 26741, Charlotte, NC 28213. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Containers, container parts, equipment and materials and supplies used in the distribution, production, and sale of containers,* (1) between Charlotte, NC, on the one hand, and, on the other, points in AL, FL, KY, and WV, (2) between Mauldin, SC, on the one hand, and on the other, points in AL, FL, KY, VA, and WV, (3) between Hollywood and Orlando, FL, on the one hand, and, on the other, points in GA, NC, and SC. Supporting shipper: Sewell Plastics, Inc., P.O. Box 8051, Charlotte, NC 28208.

MC 151508, (Sub-3–1TA), Filed August 11, 1980. Applicant: BARY, INC., 4715 Pinewood, Louisville, KY 40218. Representative: Jack Bary, 1303 Blackwood Court, Jeffersonville, IN 47130. *Contract carrier,* irregular routes; *Home and office furniture, desks, chairs, filing cabinets, storage boxes, safes, timing devices, clocks, appliances and fixtures and parts used in the manufacture thereof,* between New Albany, IN and Louisville, KY, on the one hand, and, on the other, points in the states of AK, IA, KS, MN, MO, NE, OK, TX and points east of the MS River except ME. Supporting shipper: Murphy Manufacturing Co., Inc., 900 Park Place, New Albany, IN 47150.

MC 2934 (Sub-3–8TA), Filed August 8, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, Indiana 46032. Representative: W. G. Lowry, 9998 North Michigan Road, Carmel, Indiana 46032. *New Furniture (cartoned and uncartoned).* From: MIchigan City, Indiana. To: AL, AR, CT, DE, DC, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI. Supporting shipper: Inter Royal Corporation, Royal Road, Michigan City, Indiana 26360.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-25284 Filed 8-19-80; 8:45 am]

BILLING CODE 7035-01-M

## Motor Carrier Finance Applications; Decision-Notice

In FR Doc. 80–22950, appearing in the issue of Thursday, July 31, 1980, please make the following correction:

On page 50947, second column, second paragraph, first line, "MC–F–14284F, filed January 4, 1980" was omitted from beginning of publication of F–B TRUCK LINE COMPANY.

BILLING CODE 1505-01-M

## INTERNATIONAL TRADE COMMISSION

[Invoice. No. 337–TA–69]

## Certain Air-Tight Cast-Iron Stoves; Termination

Upon consideration of the presiding officer's recommendation and the record in this proceeding, the Commission is ordering the termination of Inv. No. 337–TA–69, *Certain Air-Tight Cast Iron Stoves,* with respect to three respondents, Oriental Kingsworld Industrial Co. Ltd., Nelson and Small Inc., and Borneo Sumatra Trading Co.

The order is effective as of August 12, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order. Such petitions must be in accord with Commission Rule 210.56 (19 CFR 210.56).

Copies of the Commission's Action and Order, the Commission's Opinion and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW, Washington, D.C. 20436, telephone 202–523–0161.

Notice of the institution of this investigation was published in the Federal Register of July 12, 1979 (44 FR 40732).

Issued: August 12, 1980.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 80-25347 Filed 8-19-80; 8:45 am]

BILLING CODE 7020-02-M

[Invoice No. 337–TA–69]

## Certain Airtight Cast-Iron Stoves; Order for Written Comments Regarding Relief, Bonding and the Public Interest

**AGENCY:** United States International Trade Commission.

**ACTION:** Written comments on relief, bonding, and the public interests.

**SUMMARY:** This request follows a Recommended Determination of the Administrative Law Judge in this investigation on July 7, 1980. In her recommended determination the ALJ stated that the following respondents were in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by reason of unfair methods of competition and unfair acts in the importation or sale of Certain Airtight Cast-Iron Stoves in the United States: Hearth Craft, Hutch Manufacturing Co., Fireplace Distributors, International Foundries, Harbor Sales, Co., Crane Industries, Great Eastern Trading Co. Inc., Heritage Stove Co., Meteor Design International Ltd., Genial Jade Industrial Co., Pyramid International Co. Ltd., Justin Taiwan Industrial Co. Ltd., Cathay Overseas Trading Co., Taiwan Active Enterprises Co. Ltd., Tinpin Trading Co., Nan Shang Enterprises Co. Ltd., Linmore Enterprise Co. Ltd., Formosa May Inc., Hermix Industries Corp., Firebird Hardware Inc., Lee-Lin Enterprise Co. Ltd., Yulson Industries Co. Ltd., KFK Industrial Co. Ltd., Stratford Mfg. Co. Ltd., You Well Co. Ltd., Collins Co. Ltd., and Wood Heat. This notice requests comments on relief, bonding, and the public interest should the Commission determine that the above-named respondents are in violation of section 337. Copies of the Administrative Law Judge's recommendation may be obtained by interested persons by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E. Street N.W., Washington, D.C. 20436, telephone 202–523–0161.

**DATES:** Complainant shall file and serve on all parties of record and with the Secretary to the Commission a detailed proposed Commission action, including a proposed determination of bonding, a proposed remedy, and a discussion of

the effects of its proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers by no later than the close of business on Friday, August 29, 1980. The Commission's investigative staff shall file and serve on all parties of record a formal report reflecting its investigation of public interest factors to be considered by the Commission with the staff's recommendation and conclusions no later than the close of business on Friday, September 5, 1980. Any other party, interested agency or department, public interest group, or other member of the public wishing to file written comments and information concerning the action which complainant has proposed, any available alternatives, and the advisability of any Commission action in light of the public interest considerations listed above must file those comments no later than the close of business on Friday, September 5, 1980. Comments should conform with Commission Rule 201.8 (19 CFR 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E. Street N.W., Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey S. Neeley, Office of the General Counsel, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C. 20436; telephone 202-523-0359.

**SUPPLEMENTARY INFORMATION:** This investigation began with publication by the Commission of a notice in the Federal Register on July 12, 1979 (44 FR 40732). Twenty-five parties were named as respondents. By notice published in the Federal Register (44 FR 58816) on October 11, 1979, the Commission named twenty-six additional respondents. A subsequent notice dated October 24, 1979 (44 FR 61269) named one more respondent. In her recommended determination of July 7, 1980 the Administrative Law Judge found that twenty-seven respondents had engaged in one or more unfair methods of competition or unfair acts in the importation or sale in the United States of cast-iron wood-burning or coal-burning stoves which are airtight or represented to be airtight. All of the respondents found to be violating section 337 were in default.

**WRITTEN COMMENTS REQUESTED:** Should the Commission adopt the recommendation of the Administrative Law Judge, it must make determinations concerning the appropriate relief and bonding, if any, and it must consider the public interest. These issues are described below.

(a) *Relief.*—In the event that the Commission were to find a violation of section 337, it would issue (1) an order which could result in the exclusion from entry of certain airtight cast-iron stoves into the United States or (2) an order which could result in requiring respondents to cease and desist from unfair methods of competition or unfair acts in the importation and sale of these airtight cast-iron stoves. Accordingly, the Commission is interested in what relief should be ordered, if any.

(b) *Bonding.*—In the event that the Commission were to find a violation of section 337 and order some form of relief, that relief would not become final for a sixty-day period during which the President would consider the Commission's determination. During this period, the airtight cast-iron stoves would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Should the Commission determine that a bond is unnecessary, importation could continue during this period. Accordingly, the Commission is interested in what bond should be determined, if any.

(c) *The Public Interest.*—In the event that the Commission were to find a violation of section 337 and order some form of relief, the Commission must consider the effect of that relief upon the public interest. Accordingly, the Commission is interested in the effect of any exclusion order or cease and desist order upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

(d) *Request for Oral Argument and Oral Presentation.*—At present, no oral argument is planned with respect to the recommended determination of the presiding officer concerning whether there is a violation of section 337 of the Tariff Act of 1930 in this matter. Similarly, no oral presentation is planned with respect to the relief, bonding, and public interest factors set forth in section 337(d) and (f) of the Tariff Act of 1930. (19 U.S.C. 1337). However, the Commission will consider requests for an oral argument or an oral presentation if they are received by the Secretary of the Commission not later than September 19, 1980.

By order of the Commission.

Issued: August 15, 1980.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 80-25343 Filed 8-19-80; 8:45 am]
BILLING CODE 7020-02-M

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[Investigation No. 337-TA-67]

## Certain Inclined-Field Acceleration Tubes; Termination of Investigation With Respect to the University of Pittsburgh

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Termination of investigation No. 337-TA-67, Certain Inclined-Field Acceleration Tubes, with respect to respondent University of Pittsburgh.

Notice is hereby given that the Commission, having on June 25, 1980, published for comment a licensing agreement between Complainant High Voltage Engineering Corp., South Bedford Street, Burlington, Mass., and respondent University of Pittsburgh, Pittsburgh, PA., settling complainant's patent infringement claims against the university (45 FR 42893), and having received no comments thereon, hereby terminates this investigation with respect to the University of Pittsburgh.

**EFFECTIVE DATE:** August 13, 1980.

**FOR FURTHER INFORMATION CONTACT:** Louis Mastriani, Commission investigative attorney (202-523-0489) or Michael Jennison, Office of the General Counsel (202-523-0189).

**AUTHORITY:** The authority for termination of a respondent is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51-.55.

**SUPPLEMENTARY INFORMATION:** Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission order. Petitions must be in accord with section 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.56).

Copies of the Commission's action and order and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Notice of the institution of this investigation was published in the Federal Register of June 27, 1979 (44 FR 32567).

Issued: August 13, 1980.

By order of the Commission.
Kenneth R. Mason,
*Secretary.*
[FR Doc. 80-25346 Filed 8-19-80; 8:45 am]
BILLING CODE 7020-02-M

[332-73]

## Release for Public Comment of Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

**AGENCY:** United States International Trade Commission.

**ACTION:** Release for public comment, pursuant to Commission investigation No. 332-73, under the authority of section 332(g) of the Tariff Act of 1930, as amended, of drafts of the following chapters of the Harmonized Commodity Description and Coding System as provisionally adopted by the Harmonized System Committee and the Nomenclature Committee of the Customs Cooperation Council.

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
Chapter 31: Fertilizers
Chapter 32: Tanning or dyeing extracts; tannings and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks
Chapter 38: Miscellaneous chemical products
Chapter 84: Nuclear reactors, boilers, machinery and mechanical applicances; parts thereof
Chapter 85: Electrical machinery and equipment; parts thereof
Chapter 93: Arms and ammunition; parts thereof
Chapter 94: Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings
Chapter 99: Works of art, collectors' pieces, and antiques

**WRITTEN SUBMISSIONS:** Parties wishing to submit written comments should do so by December 1, 1980.

**HEARING:** Parties desiring the Commission to hold a hearing on these draft chapters of the Harmonized Code should contact the Secretary of the Commission by October 1, 1980 and show good cause for holding a hearing.

**COPIES OF DOCUMENTS:** Copies of the chapters which are subject of this notice are available for public inspection at the offices of the Commission, 701 E Street NW, Washington, D.C. 20436, or at 6 World Trade Center, New York, N.Y. 10048. The Commission will also send copies to interested parties upon request.

**FOR FURTHER INFORMATION CONTACT:** Eugene A. Rosengarden, Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, Telephone: 202/523-0370.

**SUPPLEMENTARY INFORMATION:** In its public notices of February 8, 1980 (45 F.R. 9828 of February 13, 1980) and March 21, 1980 (45 F.R. 19696 of March 26, 1980) the Commission identified 59 chapters of the Harmonized Commodity Description and Coding System (Harmonized System) for which texts had been provisionally adopted by the Harmonized System and Nomenclature Committees of the Customs Cooperation Council. The purpose of the above mentioned notices was to invite comments and views of interested parties with respect to the 59 chapters.

Since the release of the March 21, 1980 notice, provisionally adopted texts of nine further chapters have been published by the Customs Cooperation Council. This notice hereby amends the previous notice by adding these nine new chapter texts to the list of texts released for public comment.

This notice is being issued pursuant to Commission investigation No. 332-73, instituted on January 31, 1975 (40 F.R. 6329), under section 332(g) of the Tariff Act of 1930, as amended. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974, which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems [sic] Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting should principles of commodity identification and specification and modern producing methods and trading practices * * *.

The Harmonized System is being developed by the Customs Cooperation Council (CCC), an 80-member international organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of transactions in international trade. The Harmonized System will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature (CCCN), formerly known as the Brussels Tariff Nomenclature (BTN).

Currently, the Technical Team working under auspices of the CCC prepares drafts of the various chapters of the Harmonized System for consideration by the Harmonized System Committee, which was established in order to develop the code. These drafts are forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee meets three times a year to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters may extend to more than one meeting.

In its public notices of May 4, 1976 (41 FR 18716 of May 6, 1976), August 9, 1976 (41 FR 34370 of August 13, 1976), December 20, 1976 (41 FR 55948 of December 23, 1976), September 1, 1977 (42 FR 44852 of September 7, 1977), February 7, 1978 (43 FR 5902 of February 10, 1978), October 16, 1978 (43 FR 48723 of October 19, 1978), February 14, 1979 (44 FR 10435 of February 20, 1979), May 16, 1979 (44 FR 29740 of May 22, 1979), September 5, 1979 (44 FR 53112 of September 12, 1979), January 28, 1980 (45 FR 7648 of February 4, 1980), February 1, 1980 (45 FR 8168 of February 6, 1980), May 20, 1980 (45 FR 36231 of May 29, 1980), and May 23, 1980 (45 FR 36230 of May 29, 1980), the Commission identified those chapters which have been considered thus far by the Harmonized System Committee, and the chapters for which a Technical Team draft has been released.

Following its deliberation on the draft chapters, the Harmonized System Committee forwards recommended texts for the chapters to the Nomenclature Committee. The Nomenclature Committee, which supervises the operations of the convention on Nomenclature for the Classification of Goods in Customs Tariffs and is responsible for ensuring international uniformity in the interpretation and application of the CCCN, reviews the recommended texts for the Harmonized System and returns the draft chapters which it has approved to the Harmonized System Committee. The draft chapters which have thusly been provisionally approved by both committees are then held in abeyance pending final revision sessions. It is anticipated that the Harmonized System

Committee will begin final revision sessions early in 1981.

The draft chapters released for public comment today have been provisionally adopted by the Harmonized System Committee and the Nomenclature Committee according to the above described procedure. As further chapters are adopted, the Commission will issue future notice requesting public comment.

In 1977, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized System, the interagency committee has instituted procedures which takes into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized System for consideration by the interagency committee in the determination of U.S. proposals with respect to the Harmonized Code. In making proposals, the Commission is seeking and taking into consideration the views of trade and industry and other interested parties and of interested Government agencies.

Issued: August 15, 1980.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 80-25349 Filed 8-19-80; 8:45 am]

BILLING CODE 7020-02-M

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[332-112]

## Quarterly and Annual Reports Providing Information Providing Information on Color Television Receivers and Certain Subassemblies Thereof

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of an investigation under the authority of section 332(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(b)), to establish a permanent docket for the quarterly and annual reports concerning color television receivers and certain subassemblies thereof required by Presidential Proclamation 4769 of June 30, 1980 (45 FR 45237, July 2, 1980).

**EFFECTIVE DATE:** July 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Fletcher or Mr. Scott Baker, Machinery and Equipment Division, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436 (telephone 202-523-0378, 202-523-0361, respectively).

**SUPPLEMENTARY INFORMATION:** On May 16, 1980, the United States International Trade Commission reported to the President (Publication 1068) the results of its investigation under section 203(i)(3) of the Trade Act of 1974 (19 U.S.C. 2253(i)(3)). The Commission advised that termination of import relief in effect with respect to color television receivers and subassemblies thereof from Taiwan and Korea will have an adverse impact on the domestic industry producing like or directly competitive articles.

After considering the advice of the Commission, the President determined that an extension of the orderly marketing agreements with the Coordinating Council for North American Affairs (representing Taiwan) and the Republic of Korea, covering color television receivers and certain subassemblies thereof, is in the national interest.

On June 30, 1980, the President issued Proclamation 4769 limiting, effective July 1, 1980, the number of color television receivers imported into the United States from Taiwan and Korea through June 30, 1982, unless earlier modified or terminated.

Paragraph (8) of Presidential Proclamation 4769 directs as follows:

(8) The USITC shall issue reports and conduct the following surveys with respect to the certain color television receivers, and subassemblies thereof the subject of this proclamation:

(a) *Quarterly* surveys by calendar quarter to obtain from producers in the United States monthly data on production, shipments, inventories, employment, man-hours, prices, and other economic factors indicative of conditions in the U.S. industry. The initial surveys shall cover the second quarter of 1980. Subsequent surveys shall cover individual quarters with the last such survey covering the quarter which ends not less than 60 days prior to the termination of the import relief. The USITC shall publish the results of the surveys within 45 days after the end of the surveyed quarter.

(b) *Annual.* Annual surveys to obtain data from producers in the United States by calendar quarter on profits, capacity, and annual data on capital expenditures and research and development expenditures; and to obtain from importers data by calendar quarter on prices, orders, and inventories. The initial surveys shall cover the calendar year 1980, and the results shall be published by March 31, 1981. The results of subsequent surveys shall be published by March 31 of each year thereafter so long as the import relief is in effect.

Issued: August 12, 1980.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 80-25350 Filed 8-19-80; 8:45 am]

BILLING CODE 7020-02-M

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## DEPARTMENT OF JUSTICE

## Membership of Performance Review Boards

**AGENCY:** Department of Justice.

**ACTION:** Notice of the Department of Justice's Performance Review Boards.

**SUMMARY:** Pursuant to the requirement of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Performance Review Boards. The purposes of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy or Associate Attorney General regarding the ratings.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Oser, Director, Personnel and Training Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530. Telephone: 633-3221.

Harry H. Flickinger,

*Executive Secretary, Senior Executive Resources Board.*

Offices, Boards and Divisions Performance Review Boards:

**Board 1**

Rhoda Mancher, Chairperson,
Deputy Assistant Attorney General,
Justice Management Division
Theodore D. Peyser, Jr.,
Chief, Court of Claims Section,
Tax Division
Gerald A. Connell,
Chief, General Litigation Section,
Antitrust Division
Thomas S. Martin,
Deputy Assistant Attorney General,
Civil Division
Martin B. Danziger,
Deputy Commissioner,
Immigration and Naturalization Service
Robert L. Dennis,
Deputy Director,
Community Relations Service
Anthony C. Liotta,
Deputy Assistant Attorney General,
Lands Division

**Board 2**

Stuart E. Schiffer, Chairman,
Deputy Assistant Attorney General,
Civil Division
John E. Huerta,
Deputy Assistant Attorney General,
Civil Rights Division

Joseph H. Widmar,
Director of Operations,
Antitrust Division
Michael W. Dolan,
Deputy Assistant Attorney General,
Office of Legislative Affairs
Lois J. Schiffer,
Chief, General Litigation Section,
Lands Division
David L. Milhollan,
Chairman,
Board of Immigration Appeals
John C. Keeney,
Deputy Assistant Attorney General,
Cariminal Division

Board 3

Lloyd A. Bastian, Chairman,
Assistant Director,
Planning Budget and Administration,
United States Marshals Service
James P. Turner,
Deputy Assistant Attorney General,
Civil Rights Division
Gerald E. McDowell,
Chief, Public Integrity Section,
Criminal Division
Lawrence Lippe,
Chief, General Litigation and Legal Advice Section,
Criminal Division
William S. Lynch,
Senior Counsel for Litigation,
Criminal Division

Board 4

Ronald L. Gainer, Chairman,
Deputy Assistant Attorney General,
Office for Improvements in the Administration of Justice
Stanley F. Krysa,
Chief, Criminal Section,
Tax Division
Larry L. Simms,
Deputy Assistant Attorney General,
Office of Legal Counsel
Stuart A. Smith,
Tax Assistant,
Office of the Solicitor General

Immigration and Naturalization Service Performance Review Board:

Charles C. Sava, Chairman,
Associate Commissioner, Enforcement,
Immigration and Naturalization Service
Edward F. O'Connor,
Regional Commissioner, Western Region,
Immigration and Naturalization Service
Julie P. Dubick,
Assistant Director for Legal and Personnel Programs,
United States Marshals Service
Andrew J. Carmichael,
Assistant Commissioner, Naturalization,
Immigration and Naturalization Service
Hugh J. Brien,
Assistant Commissioner, Detention and Deportation,
Immigration and Naturalization Service

Office of Justice Assistance, Research and Statistics Performance Review Board:

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Acting Director,
Office of Justice Assistance, Research and Statistics
Walter R. Burhart,
Director, Office of Research Programs,
National Institute of Justice
Gilbert M. Leigh, Jr.,
Director, Finance Staff,
Justice Management Division
George H. Bohlinger,
Acting Assistant Administrator, Criminal Justice Programs,
Law Enforcement Assistance Administration
Wayne P. Holtzman,
Director, Systems Development Division,
Bureau of Justice Statistics

Federal Prison System Performance Review Board:

James D. Williams, Chairman,
Assistant Director, Correctional Programs,
Federal Prison System
Gary R. Mote,
Assistant Director, Planning and Development,
Federal Prison System
Gerald M. Farkas,
Associate Commissioner, FPS (UNICOR),
Federal Prison System
Z. Stephen Grzegorek,
Regional Director, Northeast Region,
Federal Prison System
John L. Poore,
Deputy Assistant Attorney General,
Civil Division
Gary R. McCune,
Regional Director, Southeast Region,
Federal Prison System
James D. Henderson,
Regional Director, North Central Region,
Federal Prison System

[FR Doc. 80-25295 Filed 8-19-80; 8:45 am]
BILLING CODE 4410-01-M

## NUCLEAR REGULATORY COMMISSION

### Availability of Draft Human Engineering Guide To Control Room Evaluation

Notice is given that the Commission's Office of Nuclear Reactor Regulation has published a draft Human Engineering Guide to Control Room Evaluation which was prepared for the Commission by the Essex Corporation of Alexandria, Virginia. Identified as NUREG/CR-1580, the draft is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C., and in all other Commission Local Public Document Rooms. This document is a draft version of the control room design review guidelines described in Task 1.D of the NRC Action Plan developed as a result of the TMI-2 Accident, NUREG-0660. The guidelines are intended to provide guidance for a detailed control room design review to identify and correct design deficiencies. This review will be performed by all operating reactor licensees and applicants for operating licenses. Review subjects include an assessment of control room layout, the adequacy of the information provided, the arrangement and identification of important controls and instrumentation displays, the usefulness of the audio and visual alarm systems, the information recording and recall capability, the control room environment, and other considerations of human factors that have an impact on operator effectiveness.

Interested persons may submit comments on the draft guidelines for the Commission's consideration. Operating reactor licensees, applicants for operating licenses, and designated Federal agencies and organizations with experience in human factors analysis are being provided with copies of the draft guidelines. Comments on the draft guidelines received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. Upon consideration of comments submitted with respect to the draft guidelines, the NRC will prepare final guidelines, the availability of which will be published in the Federal Register. The final guidelines will be identified as NUREG-0700.

The Commission staff plans to meet with operating reactor licensees and applicants for operating licenses, human factor engineering experts, and other interested parties at some time after comments on the draft guidelines have been received, but prior to publication of the final guidelines. The purpose of these meetings will be to review the guidelines in the context of the Commission's evaluation criteria that are to be developed and used by the Commission staff to judge the acceptability of the design reviews performed and the design modifications implemented. Notice of these meetings will be published in the Federal Register.

Comments on the draft Human Engineering Guide to Control Room Evaluation should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Human Factors Safety. Comments are due by September 12, 1980.

Dated at Bethesda, Md., this 12th day of August 1980.

D. Tondi,

*Acting Chief, Human Factors Engineering Branch, Division of Human Factors Safety.*

[FR Doc. 80-25272 Filed 8-19-80; 8:45 am]
BILLING CODE 7590-01-M

[NUREG-0612]

## Issuance and Availability: Control of Heavy Loads at Nuclear Power Plants—Resolution of Task A-36

The Nuclear Regulatory Commission (NRC) staff has prepared a report entitled, "Control of Heavy Loads at Nuclear Power Plants—Resolution of Task A-36" (NUREG 0612), dated July 1980. The report provides the staff's resolution of the NRC's Generic Technical Activity A-36, which was an "unresolved safety issue" pursuant to Section 210 of the Energy Reorganization Act of 1974, as amended.

The generic study was established to take a systematic look at staff licensing criteria and adequacy of measures in effect at operating plants, and to recommend necessary changes to assure the safe handling of heavy loads in the area of the fuel storage pool, fuel in the reactor vessel during refueling, and safety related equipment.

NUREG 0612 describes the types of heavy loads handled, the potential consequences of load handling accidents, and the staff's plan for implementing guidelines to assure safe load handling.

The staff has determined that a number of procedural and design measures are in effect at operating plants to reduce the likelihood or mitigate the effects of load handling accidents; however, adequate measures have not been taken for all of the heavy loads that may be handled and the potential consequences that may result from a load handling accident. NUREG 0612 describes the interim measures that should be satisfied until full conformance to the guidelines in the report. The staff will be sending a generic letter to licensees identifying the interim measures that should be implemented.

Our review showed that load drops occur rather infrequently. Nonetheless, load drops can and have occurred at nuclear facilities, although these have not resulted in an offsite release of radioactive material. The staff believes that the likelihood for a load drop in this interim period and the potential consequences warrant some interim actions prior to final implementation of the guidance in NUREG 0612. The measures that will be implemented at operating facilities in this interim period include: revisions to technical specifications to include a restriction on carrying heavy loads over fuel in the storage pool; definition of safe load paths; development of procedures for handling heavy loads; training of crane operators; crane inspections; and a special review of equipment, procedures, and personnel training for the handling of loads which must be brought over the core such as vessel internals or the vessel inspection tool. These measures will assure that heavy loads are kept away from fuel in the core or spent fuel pool except where necessary, that equipment used to handle these heavy loads are in proper condition, and that personnel who handle these loads have received sufficient direction and training.

NUREG 0612 also provides guidelines to assure safe load handling over the life of the plant and acceptance criteria for evaluation of licensee measures and designs related to load handling. General guidelines are provided that include definition of safe load handling paths, qualification and training of crane operators, selection and proper use of slings and other handling devices, and periodic inspection, test, and maintenance of cranes. Additionally, certain area specific guidelines are provided that include alternatives on upgrading handling system reliability, use of mechanical stops or electrical interlocks to restrict crane travel, or analyzing the consequences of postulated load handling accidents to demonstrate that acceptance criteria are satisfied. The factors that should be considered in these analyses are also specified.

NUREG 0612 also contains recommended changes to Regulatory Guides and Standard Review Plans that will be used in the CP and OL licensing reviews.

The staff has initiated the implementation review of the guidelines in NUREG 0612 on a plant specific basis.

Copies of the report will be available after August 14, 1980. Copies will be sent directly to utilities, utility groups and associations, and environmental and public interest groups. Copies will also be forwarded to the applicable Congressional Committees for their information and use. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Commission's local public document room located in the vicinity of existing nuclear power plants. Addresses of these local public document rooms can be obtained by contacting the Chief, Local Public Document Room Branch, Mail Stop 309, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536.

Dated at Bethesda, Md., this 12th day of August 1980.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

*Acting Director, Division of Operating Reactors Office of Nuclear Reactor Regulation.*

[FR Doc. 80-25271 Filed 8-19-80; 8:45 am]
BILLING CODE 7590-01-M

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[Docket No. 50-255]

## Consumers Power Co.;

## Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Provisional Operating License No. DPR—20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in Covert Township, Van Buren County, Michigan. The amendment is effective as of it date of issuance.

The amendment deletes the requirement for quarterly stroking of the valves associated with the operation of the Safety Injection and Refueling Water Storage Tank Level Switch Interlocks except when in cold shutdown or refueling modes.

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 action was not required since the amendment does not involve a significance hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any signficant 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 May 14, 1980, (2) Amendment No. 59 to License No. DPR—20, 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. 20555, and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear

Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 29th day of July 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

*Chief, Operating Reactors Branch No. 5, Division of Licensing.*

[FR Doc. 80-25267 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-166]

## University of Maryland; Proposed Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-70, issued to the University of Maryland (the licensee), for operation of the TRIGA-type research reactor located on the licensee's campus at College Park, Maryland.

The renewal would extend the expiration date of Facility License No. R-70 to June 29, 2000, in accordance with the licensee's timely application for renewal dated May 23, 1980.

Prior to renewal of the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 19, 1980, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall 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. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petitioner should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference schedules in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a 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.

Contentions shall be limited to matters within the scope of the renewal action under consideration. 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.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 324-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: (petitioner's name and telephone number); (date petition was mailed); (University of Maryland); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Dr. John S. Toll, President, University of Maryland, Adelphi, Maryland 20783.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated May 23, 1980, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Bethesda, Md., this 11th day of August 1980.

For Nuclear Regulatory Commission.

James R. Miller,

*Chief, Standardization and Special Projects Branch, Division of Licensing.*

[FR Doc. 80-25286 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-367 CPA]

## Northern Indiana Public Service Co., (Bailly Generating Station, Nuclear 1); Hearing on Amendment of Construction Permit Extension

On November 30, 1979, the Nuclear Regulatory Commission published in the Federal Register a Notice of Opportunity for Hearing on a Proposed Issuance of an Amendment to Construction Permit CPPR-104 that had been issued to the Northern Indiana Public Service Company (Permittee) for construction of the Bailly Generating Station, Nuclear 1 (the facility), a boiling water reactor to be located 12 miles northeast of Gary, Indiana. The proposed amendment would extend the latest date for completion of the facility from September 1, 1979 to December 1, 1987.

The Notice indicated that 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 the extension of the completion date for a reasonable period of time. The Notice determined that Permittee's application for extension had been filed more than thirty (30) days prior to the date for expiration of the permit, as required by the Administrative Procedure Act and 10 CFR 2.109, and that, consequently, the construction permit would not be deemed to have expired until the application has been finally determined.

The Notice also provided that, by December 31, 1979, the Permittee and any person whose interests may be affected by the proceeding might file a request for a hearing with respect to whether, pursuant to 10 CFR 50.55(b), good cause has been shown for the requested extension, *i.e.*, whether the causes put forward by Permittee are among those which the Commission will recognize as bases for extending the completion date. By that date, individual petitions were received from: George Schultz, Local 1010 of the United Steelworkers of America, the Lake Michigan Federation, and the State of Illinois. Joint petitions were also received by that date from a group of petitioners denominated "Porter County Chapter Petitioners", another group denominated "Gary Petitioners", and George and Anna Grabowski. An Atomic Safety and Licensing Board was designated to rule upon intervention petitions and request for hearings, and to preside over the proceeding in the event that a hearing is ordered. The members of the Board are: Mr. Glenn O. Bright, Dr. Richard F. Cole, and Mr. Herbet Grossman who will serve as Chairman of the Board.

On August 7, 1980, the Board granted the petitions of Local 1010 (conditionally), the State of Illinois, Porter County Chapter Petitioners, and George and Anna Grabowski. As a result, a hearing to consider the proposed amendment to construction permit will be held near the site of the Bailly construction, at a time and place to be established.

Limited appearance statements will be heard at the hearing. Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. Persons desiring to make limited appearances are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A person making a limited appearance does not become a party but may state his position and raise questions which, if relevant, the Board may require be answered by the parties through evidence on the record. Limited appearances will be received at the time of the evidentiary hearing within such limits and on such conditions as may be fixed by the Board.

For further details with respect to this action, see the applications for extension dated February 7, 1979 and August 31, 1979, which are available for public inspection at the Commission's Public Document Room, 1717 H St., NW., Washington, D.C. and at the Westchester Township Public Library, 125 South 2nd Street, Chesterton, Indiana.

By order of the Board.

Dated at Bethesda, Md., this 14th day of August 1980.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

*Chairman.*

[FR Doc. 80-25270 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-344]

## Portland General Electric Co., (Trojan Nuclear Plant); Director's Decision

By telegram dated May 29, 1980, the Trojan Decommissioning Alliance of Portland, Oregon, requested that the Commission suspend operation of the Trojan Nuclear Plant on the basis of potential dangers posed by recent volcanic activity at Mount St. Helens in Washington State. On June 3, 1980, the Commission referred this request for action to the NRC Staff for consideration under 10 CFR 2.206 of the Commission's regulations. For the reasons stated in this decision, the Alliance's request is denied.

The potential impact of volcanic activity on the safety of the Trojan facility was investigated thoroughly by government geologists (Atomic Energy Commission and the U.S. Geological Survey) before the plant was allowed to be constructed and again before the operating license was issued. This investigation and reassessment of volcanic-related hazards has continued as attested by the affidavit which was filed with the Atomic Safety and Licensing Board in the Trojan spent fuel pool expansion proceeding in April, 1978.

Although this report filed prior to the recent volcanic activity, it is with few exceptions considered an accurate assessment today. Exceptions to the report include (1) the underestimation of volume of debris associated with a potential mudflow, (2) exclusion of a discussion of volcano-induced earthquakes, and (3) the statement that historic data indicates that the volcano has been substantially more active in the 19th century than the 20th century. Notwithstanding the above exceptions, the report's conclusion that the Trojan site is suitable from a volcanic hazards point of view remains accurate.

The recent massive eruption of May 18, 1980 exceeded that envisioned by the Nuclear Regulatory Commission and by our advisors, the U.S. Geological Survey. Nevertheless, the effects of the recent volcanism (mudflows, earthquakes and ashfall) at the Trojan site have been minimal. Mudflows in the Toutte, Kalama, and Lewis River valleys have not comprised the safety of the Trojan plant. Volcanic-induced earthquakes have been small and have neither been felt nor recorded instrumentally at the site. Ashfall at the Trojan plant resulting from the May 25, 1980 eruption has been slight (not exceeding ⅛ of an inch) and fell at the site in the form of a muddy rain or mist. The only other indication of ash occurred on April 29, 1980 when a thin coating of the ash was noted at the Trojan site.

According to University of Washington seismologists, the volcanic-induced earthquakes mentioned previously have not exceeded Richter Magnitude 5.1 and have been concentrated in an area roughly coincidental with the volcano crater which is 35 miles northeast of the Tojan plant. None of the larger events (Magnitude 5.0 and above) have occurred closer than 35 miles to the plant. For the most part, the volcanic earthquakes have occurred as shallow depths and have consequently been felt only in the immediate vincinity of the seismic event. However, there have been unconfirmed reports of volcanic-related earthquakes (originating at Mount St. Helens) being felt in the Longview-Kelso, Washington area, roughly five miles north of the Trojan plant. Apparently those feeling the tremors were located in areas where soil overlies bedrock. The plant is designed to safely withstand seismic levels of 0.25g peak ground acceleration. This corresponds to earthquake levels many times greater than those generated by the volcano-induced earthquakes.

We have been in constant contact with numerous state, governmental agency, and university scientists since initiation of earthquake activity and subsequent volcanic activity in the vincinty of Mount St. Helens on March 20, 1980. This surveillance, accumulation of information, and assessment will continue as long as the volcano remains active. In addition, representatives of the NRC staff visted the Trojan site and environs on June 18, 1980 for the specific

purpose of assessing the safety of Trojan in light of the recent volcanic activity.

Our conclusion, based upon an evaluation of volcanic phenomena prior to construction, coupled with an assessment of the effects of the activity beginning March 20, 1980, is that the Trojan site remains suitable from a volcanic hazards viewpoints.

As to evacuation under severe ashfall conditions, this can cause transportation problems somewhat similar to those produced by road icing or heavy snowfall. The first protective action to be taken following a radiological emergency at a nulcear facility is to alert the public to take shelter and await further instructions. Seeking shelter in homes is an effective protective measure under most circumstances. A decision to evacuate is based on an assessment of the potential injury to the public from the accident and must be balanced against the risk to the public from the evacuation itself and against the conditions that prevail at the time. Seeking shelter would have to be given greater weight under ashfall conditions, depending on its severity.

Beyond about five miles, sheltering following by relocation within several hours is essentially as effective as immediately evacuation. Within five miles, sheltering is still an effective protective measure. Under ashfall conditions, consideration would have to be given to limiting the evacuation area, depending on the exact circumstances. This would reduce the difficulty of evacuating those persons exposed to the greatest risk.

Therefore, if an accident occurred in combination with transportation difficulties due to severe volcanic ashfall, effective protecting measures can still be implemented, albeit with greater difficulty. The probability of these two events occurring simultaneously is, however, extremely low.

Based on the foregoing, your request on behalf of the Trojan Decommissioning Alliance that operation of the Trojan Nuclear Plant be suspended on the basis of the recent volcanic activity at Mount St. Helens is denied.

Dated at Bethesda, Md., this 13th day of August 1980.

Edson G. Case,

*Acting Director, Office of Nuclear Reactor Regulations.*

[FR Doc. 80-25269 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

## Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amemend No. 61 to Facility Operating Licenses No. DPR-3, issued to Yankee Atomic Electric company (the licensee), which revised the license and its appended Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Rowe, Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment deletes the technical specifications for secondary water chemistry and incorporates a new license condition in the license, paragraph 2.C(5), for implementation of a secondary water chemistry monitoring program which inhibits steam generator tube degradation.

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 September 24, 1979 (Proposed Change No. 167), (2) Amendment No. 61, to License No. DPR-3, 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 Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director Division of Licensing.

Dated at Bethesda, Md., this 21st day of July 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

*Chief, Operating Reactors Branch No. 5, Division of Licensing.*

[FR Doc. 80-25273 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

## Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, OH 710-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Health Physics Surveys in Uranium Mills" and is intended for Division 8, "Occupational Health." It is being developed to describe health physics surveys acceptable to the NRC staff for protecting uranium mill workers from radiation and the chemical toxicity of uranium while on the job.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by October 20, 1980.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 11th day of August 1980.

For the Nuclear Regulatory Commission.

Karl R. Goller,

*Director, Division of Siting, Health and Safeguards Standards, Office of Standards Development.*

[FR Doc. 80-25274 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.25, "Calibration and Error Limits of Air Sampling Instruments for Total Volume of Air Samples," identifies methods for calibrating air sampling instruments used to assess the air concentration of radioactive materials and provides guidance for measuring within certain limits the volume of air sampled. This guide endorses and supplements a manual, "Air Sampling Instruments for Evaluation of Atmospheric Contaminants," 5th Edition, 1978, published by the American Conference of Governmental Industrial Hygienists.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 12th day of August 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

*Director, Office of Standards Development.*

[FR Doc. 80-25268 Filed 8-19-80; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### President's Commission for a National Agenda for the Eighties; Meeting

August 14, 1980.

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to Pub. L. 92-463, notice is hereby given for a meeting of Panel VII (Electoral Process) of the President's Commission for a National Agenda for the Eighties. The meeting is scheduled for August 27, 1980, from 3:30 p.m. to 6:00 p.m., in room 9104 of the New Executive Office Building, in Washington, D.C.

The purpose of the meeting is to discuss the panel's option paper on the Presidency and the Executive branch.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest; Washington, D.C. 20006, (202) 275-0616.

Brenda Mayberry,

*Acting Budget and Management Officer.*

[FR Doc. 80-25283 Filed 8-19-80; 8:45 am]

BILLING CODE 3110-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Articles Being Considered for Possible Duty Modification

*Correction*

In FR Doc. 80-23950 appearing at page 52978 in the issue of Friday, August 8, 1980, make the following corrections to Annex I:

(1) On page 52979, TSUS item 118.30 should be followed by footnote reference "[1]".

(2) On page 52979, item 517.91 is listed twice but should be listed only once.

(3) Also on page 52979, item 603.30 was left out and should be inserted in its correct numercial order.

(4) On page 52980, at the end of Annex I insert the following footnote texts:

[1] Only goat's milk products not containing any other type of milk.

[2] Only pineapple and quince pastes and pulps.

[3] Only sauces other than tomato.

BILLING CODE 1505-01-M

## SMALL BUSINESS ADMINISTRATION

### Availability of Fiscal Year 1980 Funds for Continuation of Data Base Development Design With Specific Application to Large Micro Data Files

**AGENCY:** Small Business Administration, Office of Advocacy.

**ACTION:** Notice.

**SUMMARY:** The Office of Economic Research, Office of Advocacy announces availability of FY 80 funds to continue its data base development work. Under Public Law 94-305, passed in 1976, funds will be awarded as cooperative agreements which means that substantial performance involvement between the Small Business Administration and the recipient is anticipated. Any person or group outside the Federal Government may submit a proposal. This notice sets forth: (1) conditions under which proposals will be evaluated to determine relevance to the project objectives; (2) filing dates; (3) funding; and (4) recommended format.

Vendor meeting was held on August 1, 1980.

**DATE:** Applications and accompanying proposals must be received no later than August 22, 1980.

**ADDRESS:** Small Business Administration, Office of Economic Research 1441 L Street N.W. (Room 1100 Vermont Building), Washingotn, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:**
Dr. William Whiston, or Mr. David Hirschberg, telephone (202) 634–4885.

**SUPPLEMENTARY INFORMATION:**

A. Program Objectives

Under Public Law 94–305, and more recently under S. 2698 (the Small Business Economic Policy Act), the Office of Economic Research is requested in Section 303 of the latter to "examine the current role of small business in the economy on an industry-by-industry basis and * * *" to identify economic trends which will or may affect the small business sector and the state of competition." In Section 401, the Office is requested by the Congress to provide data on "employment layoff and new hires; * * * sales and new orders; * * * debt to equity ratios" * * * among others.

This data will provide: (1) the most comprehensive, and up-to-date list of businesses in the United States; (2) a unique file of current economic and trend data which has undergone a rigorous series of imputations, tests, and benchmarking; and (3) and opportunity for future model buildings and relevant policy analyses by researchers, on and as needed basis.

B. Scope and Purpose of this Announcement

This announcement initiates the second and third phases of the Data Base Development Design. The Office of Economic Research perceives three separate projects in the second and third phases as described below. An applicant may submit a proposal on one, two, or all three projects, but each project must be applied for separately and the applicant should clearly identify which project it is they are applying for with each submission.

C. Projects

1. *Creation of an initial data base*—Much of this task has already been completed by the Brookings Institution, who will be working along with recipients of awards of this program announcement. The major files with which Brookings has been working are the Dun and Bradstreet 4.3 million record Market Identifier File and the Duns 1.0 million record Financial Statistics File. In addition, there are smaller subsets to each of these files. The tasks under this sub-heading suggest a plan for continued testing of these files for reliability of the data, choosing stratified samples for the files, updating missing employment, sales and asset data by appropriate statistical techniques, and constructing a longitudinal study of firm births and deaths from the files. To assist an applicant to prepare a proposal for this Program Announcement, the progress reports of the Brookings Institution will be made available.

2. *Coordination of above work with that of the Brookings Institution*—The applicant's plan should reflect the coordination of all research with both SBA's research needs and those of the Brookings Institution. Brookings will continue to play a major role in evaluating the progress and performance of the above work. The applicant's proposal must describe a plan to benchmark the Dun and Bradstreet data files with other published and unpublished government sources, and the applicant should include a plan which encompasses the comparability of reporting units such as those for taxpaying work, enterprises, and establishment, as they affect comparisons among data sources.

The software and hardware configurations are crucial aspects to this part of the proposal. The computer language used should be protable, as should the hardware.

3. *Experimented Testing of an Augmented Duns File*—The Office of Economic Research, Office of Advocacy is developing an Indicative Data Base which will be an *up-to-date comprehensive listing* of all relevant businesses in the United States. This involves augmenting the Dun and Bradstreet data files by adding approximately 2 million records (2 million is roughly the difference between the number of establishments in the Duns Market Identifier File and the business list data sold by commercial firms). The applicant should indicate how this matching should be done, and how they plan to test this augmented file against other specified files—such as those of the Department of Labor's Wage and Benefit program, the Unemployment Insurance system and the Internal Revenue Service's files.

D. Eligible Applicants

Any non-Federal public or private, profit or no-profit entity or individual is eligible to apply for a cooperative agreement under this announcement. Preference will be given to small business applicants.

E. Funding

For Fiscal Year 1980, the Office of Economic Research has $800,000 for funding the three projects described above. The Office of Economic Research anticipates that this will be a 5-year study; the initial budgeting, however, will be for a 1-year period. With satisfactory progress, the agreement may be renewed in succeeding years, depending on the availability of funds. A cooperative agreement may be continued, therefore, on a non-competitive basis for future years. Any proposal submitted on a multi-year basis should contain a detailed proposal for the initial year which funding is requested, plus an outline of planned activities and expected costs for succeeding years.

Acceptable proposals which cannot be funded in FY 80 will be retained and considered for FY 81 funding.

F. Review Criteria

All proposals received as a result of this solicitation will be evaluated both by a panel of experts inside the Small Business Administration and an outside panel of academic, government, and small business persons. The following factors will be used to score the proposals:

(1) The methodology should be well-defined, logically constructed, reasonably documented, and appropriate to the project: 20%.

(2) The extent to which the proposal exhibits an understanding of existing work in this and related areas of research, including data resources and limitations relevant to the proposed topic: 15%.

(3) The promise of the proposal for assistance within reasonable timeframes to gather data for Federal and non-Federal entities for the purpose of providing economic reasearch concerning the well-being of small business: 10%.

(4) The appropriateness of the project within the constraints of the facilities available and the qualifications of the personnel involved: 10%.

(5) The adequacy of the project in terms of level of effort, time, costs, organization, and management of the project: 10%.

(6) The firm submitting the proposal(s) is a small business which is defined as having average annual receipts not in excess of $2 million for the past three fiscal years: 15%.

(7) Small business status: 20%.

G. Recommended Format

Applications are to be submitted on Standard Form #424 along with the requisite number of signed copies of "Assurances and Certifications." Forms may be obtained from the following: Grants Management Officer, Small Business Administration, 1441 L Street N.W. (Room 221), Washington, D.C. 20416, Telephone (202) 653–7744. All proposals should contain the following elements:

(1) *Cover Page.*

Research proposals should be cleared through the execute officer who has the power to bind firms or institutions. One copy must be signed, in the space provided on the cover, by the principal investigator, the department chairman (if appropriate), and the authorized financial officer in the following suggested format:

Title of Proposal ——————
Name of Principal Investigator(s) ——————
Total cost of Proposal ——————
Period of Proposal ——————
Organization or Institution and Department——
Required Signatures ——————
Principal Investigator(s)——————
Name ——————
Date ——————
Address——————
Telephone Number——————
Required Organization Approval:
Name ——————
Date ——————
Address——————
Telephone Number——————
Organization Financial Officer:
Name* ——————
Date ——————
Address——————
Telephone Number——————

(2) *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

a. *Project Goals and objectives.* The projects's objectives must be clearly and unambiguously stated. To the greater extent possible, they should be stated in quantitative terms or other descriptors that can be measured.

b. *Project Outline.* The proposal should clearly define the tasks that are to be performed, the key events or milestones in accomplishing the task schedule, and the feasibility of achieving these events or milestones.

c. *Project management.* The proposal should describe how the project will be organized and managed, and should list those persons or groups assigned to the project along with their qualifications and their level of involvement in the project.

d. *Project Evaluation.* The proposal must describe how the progress of the project will be monitored and evaluated while the project is underway and upon completion. It must also indicate what actions the applicant will undertake in the event project objectives becomes unattainable. This is particularly important for demonstration projects where specific tasks and results may be influenced by factors beyond the control of the applicant.

e. *Project Costs.* The proposal must provide a detailed schedule or project costs, identifying in particular:

(a) Salaries and Fringe Benefits.

(b) Equipment.

(c) Travel.

(d) Publication costs.

(e) Other direct costs (specify).

(f) Indirect costs (attach negotiated agreement).

(g) Total Costs.

(3) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

H. Financial Information

(1) Account Identification—73–0100–0–1–376.

(2) Federal Catalog of Domestic Assistance Identification—#59.034.

Dated: August 14, 1980.

William H. Mauk, Jr.,

*Deputy Administrator.*

[FR Doc. 80–25315 Filed 8–19–80; 8:45 am]

BILLING CODE 8025–01–M

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[License No. 01/01–0306]

## Maine Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On July 16, 1980, a notice was published in the Federal Register (45 FR 47775) stating that Maine Capital Corporation, One Memorial Circle, Augusta, Maine 04330 had filed an Application with the Small Business Administration, pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business on July 31, 1980, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01–0306 on August 7, 1980, to Main Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: August 14, 1980

Michael K. Casey,

*Associate Administrator for Investment.*

[FR Doc. 80–25314 Filed 8–19–80; 8:45 am]

BILLING CODE 8025–01–M

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## Implementation of Economic Opportunity Act, as amended by Pub. L. 95–568

**AGENCY:** Small Business Administration.

**ACTION:** General notice.

Section 742(a)(2) of the Economic Opportunity Act, as amended by section 14j of Pub. L. 95–568, 42 U.S.C. 2985a(2)(a), provides that the Administrator of the Small Business Administration (SBA) after consultation with the Director of the Community Services Administration (CSA) shall promulgate regulations to insure the availability to community development corporations (CDC's) of such of SBA's programs as will further the purposes of the Economic Opportunity Act. A controversy over the effect of this section has existed between CSA and SBA since its passage in 1974. This controversy culminated in a lawsuit brought by a CDC and a small business to, among other things, compel SBA to permit the small business to enter SBA's section 8(a) program.

Pursuant to a settlement agreement entered into by SBA and the other parties to that lawsuit, SBA agreed to consult with CSA and draft proposed regulations to implement section 742(a)(2) of the Economic Opportunity Act.

The consultation process has taken place. During that process, CSA advised SBA of four specific SBA policies which it suggested should be altered by regulation, or otherwise, in order to insure that SBA's programs would be available to CDC's. These policies included:

1. SBA's affiliation rule and its effect on CDC participation in SBA programs;

2. SBA's section 8(a) program eligibility requirement that the ownership, management and daily business operations of applicants be controlled by socially and economically disadvantaged persons;

3. SBA policy that $150,000 of the required $500,000 "private capital" for entry into the Small Business Investment Company and section 301(d) licensee programs must be non-Federal.

4. SBA policy that CDC-owned businesses cannot apply for any loan programs for which their CDC has acted as a "packager."

The pertinent program offices within SBA has considered CSA's suggestions,

and have responded to them by revising the policy with respect to CDC's as packagers of loans for buisnesses in which they own interests. In this regard, a letter so advising has been prepared to be sent to CSA and appropriate changes in SBA's internal standard operating procedures are being made. In addition, two proposed regulations have been drafted dealing with CDC eligibility for SBA's section 8(a) program and Small Business Investment Company program. These proposed regulations are published elsewhere in this issue. Finally, SBA has chosen not to alter its affiliation policy, and a letter to that effect has also been prepared to be sent to CSA which explains the basis for that decision.

Dated: August 11, 1980.

William H. Mauk, Jr.

*Acting Administrator.*

[FR Doc. 80-25334 Filed 8-19-80; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### Disclosure of Information on Export Documents; Shipper's Certification of Confidentiality

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the exporting community of the provisions of a new law which changes the procedures a shipper must follow in order to request that Customs not disclose to the public the shipper's name and address from documents submitted to Customs in connection with exports from the United States. Customs will publish a final rule document at a later date amending the Customs Regulations to implement those procedural changes.

**FOR FURTHER INFORMATION CONTACT:** Doris B. Robinson, Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 (202-566-8681).

**SUPPLEMENTARY INFORMATION:**

#### Background

Public Law 96-275, which was published as T.D. 80-184 in the Customs Bulletin of July 23, 1980, an Act "to protect the confidentiality of Shippers' Export Declarations and to standardize export data submission and disclosure requirements," was enacted by Congress on June 17, 1980. The provisions of that law relating to disclosure of information became effective August 1, 1980.

Section 2 of the law provides that the name and address of a shipper contained in an outward foreign manifest or documents attached to the manifest will be subject to public disclosure unless the shipper has made a biennial (every two years) certification to Customs claiming confidential treatment for that information.

#### New Customs Procedures

To implement the many changes required by the law, Customs will amend its regulations contained in title 19, Code of Federal Regulations, Chapter I (19 CFR Chapter I), in a final rule document to be published in the Federal Register at a later date. However, as regards the new certification requirement imposed by the law, Customs considers it advisable to notify members of the exporting community of changes in disclosure of information procedures by this document.

Effective August 1, 1980, if a shipper wishes to request confidential treatment by Customs of his/her name and address, the following procedures will be used:

1. A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address.

2. There is no prescribed format for a certification.

3. The certification must be submitted to the Regional Commissioner for the Region in which the port of exportation is located.

4. Each certification will be valid for a period of two (2) years from the date of its submission to Customs.

#### Existing Shipper's Claims For Confidentiality

A shipper who, before August 1, 1980, had applied for and obtained Customs approval of a claim for confidential treatment of the shipper's name, must submit to Customs a new "certification" claiming confidentiality of the shipper's name and address if desired, following the procedure described above. However, claims of confidentiality made by a shipper and already approved by Customs will continue in effect until 60 days after the publication in the Federal Register of the final rule document (Treasury Decision) amending the Customs Regulations to implement the new law.

#### Drafting Information

The principal author of this document was Todd J. Schneider, Regulations and Research Division, Office of Regulations and Rulings. However, personnel from other Customs offices participated in its development.

Dated: August 13, 1980.

R. E. Chasen.

*Commissioner of Customs.*

FR Doc. 80-25309 Filed 8-19-80; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 80-212]

### Florasynth, Inc.; Recordation of Trade Name

On June 11, 1980, there was published in the Federal Register (45 FR 39609) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name FLORASYNTH, INC. The notice advised that prior to final action on the application, filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevent data, veiws, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice.

The name "FLORASYNTH, INC." is hereby recorded as the trade name of Florasynth, Inc., a corporation organized under the laws of the State of new York, located at 410 East 62nd Street, New York, New York 10021, when applied to essences and aromatic ingredients used as bases for cosmetics, toilet preparations, perfumes and colognes, and as flavor in foods, beverages and tobacco products; essential oils, used as an odorant to mask disinfectants, insecticides, and similar products; extracts, flavors, oils and emulsions for use in making soft drink syrups and bases; non-alcoholic preparation for producing a foam in soft drinks and a flavoring agent used in the preparation of root beer; orange compound adapted to produce a cloud in non-alcoholic, malt-less soft drink beverages and having flavoring ingredients; natural and synthetic organic flavors, extracts, oils, and blenders for alcoholic beverages; imitation vanilla bean flavor; grapefruit juice powder, lemon juice powder, lime juice powder, orange juice powder, and brown sugar powdered flavor; citrus oils for food purposes; onion powder and garlic powder; and coffee, manufactured in Brazil, Canada, England, France, Japan, Mexico and the United States. Various foreign subsidiaries are authorized to use the trade name.

Dated: August 14, 1980.
Salvatore E. Caramagno,
*Director, Office of Regulations and Rulings.*
[FR Doc. 80-25310 Filed 8-19-80; 8:45 am]
BILLING CODE 4810-22-M

## VETERANS ADMINISTRATION

### Privacy Act of 1974; Systems of Records

Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the Federal Register, a notice of the existence and character of their systems of records. Accordingly, the Veterans Administration published and adopted a notice of its inventory of personal records of September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans Administration is adding a new system of records entitled "Resident Engineer Assignment System (REAS)" (62VA08). This system is authorized under Title 5 U.S.C. Section 301 and Title 38 U.S.C. Sections 210(c) and 219.

The purpose of this new system of records is to aid in the assignment of Resident Engineers and clerical support staff to supervise VA construction sites. The data in the records will include various personal and professional information such as areas of preference, VA experience, states in which licensed, family information, etc. The data will be used exclusively in permitting the efficient scheduling of assignments of Resident Engineers and their clerical support staff to construction sites with the maximum utilization of these personnel with a minimum of relocation. No disclosures of this information will be made outside the agency.

The use of the information and data in this system is restricted solely to the office of the system manager and does not have any routine uses as defined by the Privacy Act of 1974 (5 U.S.C. 552a(a)(7)). Therefore, the requirement to give 30-days prior public notice before compiling this new system does not apply.

A "Report of New System" and an advance copy of the revised system notice were sent on June 24, 1980, to the Speaker of the House, the President of the Senate, and the Office of Management and Budget, as required by the provision of 5 U.S.C. 552a(o) of the Privacy Act and guidelines issued by the Office of Management and Budget (40 FR 45877), October 3, 1975.

Notice is hereby given that this description is effective the date of approval by the Administrator of Veterans Affairs (August 12, 1980).

Approved: August 12, 1980.
By direction of the Administrator.
Maury S. Cralle, Jr.,
*Associate Deputy Administrator.*

**SYSTEM NAME:**

Resident Engineer Assignment System, 62VA08.

**SYSTEM LOCATION:**

Records are maintained in the Office of Construction, Cental Office, Veterans Administration, Washington, D.C., 20420.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Resident Engineers and their clerical staff currently employed by the Veterans Administration Central Office and assigned to nationwide construction site supervision responsibilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include information such as station assignment, last relocation date, states in which licensed, area or preference, address, family, grade and last promotion date, employment date, and VA experience. Only records that permit efficient scheduling assignments of Resident Engineers and their clerical staff to construction sites and that will maximize utilization of these personnel with a minimum of relocations will be maintained.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 5 U.S.C. Section 301, Title 38 U.S.C., Sections 210(c), 219.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

(a) Magnetic tape at the VA Central Office.

(b) Paper documents at the VA Central Office.

**RETRIEVABILITY:**

Records are indexed by name of the employee and filed alphabetically.

**SAFEGUARDS:**

Physical Security: Maintained under lock and key in file cabinets. Access to files is restricted to Resident Engineer assignment officials on a need to know basis. The file area is locked after duty hours and protected from unauthorized access by the Federal Protective Service.

**RETENTION AND DISPOSAL:**

Records are maintained for the duration of employment of the Resident Engineers and clerical staff. When the employee leaves the Office of Construction the records are destroyed in accordance with approved VA procedures.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information Systems Staff, Office of Construction, Veterans Administration, Washington, D.C. 20420.

**NOTIFICATION PROCEDURE:**

An individual seeking information concerning the existence of records or the contents of records on him or her must furnish a written request or apply in person at the Office of the Director, Resident Engineer Staff, Office of Construction, Veterans Administration, Washington, D.C. 20420. The individual must reasonably identify the system of records and provide his or her full name.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Questionnaires completed by Resident Engineers and their clerical staff, and from present Resident Engineer staff assignment records.

[FR Doc. 80-25324 Filed 8-19-80; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 45, No. 163
Wednesday, August 20, 1980

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

**CIVIL AERONAUTICS BOARD.**

**[M-289, August 14, 1980]**

**TIME AND DATE:** 9:30 a.m., August 21, 1980.

**PLACE:** Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUBJECT:**

1. Ratification of items adopted by notation.
2. Docket 38278, Southwest Airlines notice to terminate service at Beaumont/Port Arthur, Texas. (Memo No. 9864, BDA, OCCR)
3. Dockets 38412 and 38413, Braniff Airways 90-day notice of termination of all service at Cleveland, Ohio and Milwaukee, Wisconsin, (BDA, OCCR) (Memo No. 9870)
4. Docket 38547, United Air Lines notice under section 401(j)(2) to suspend nonstop or single-plane service in 34 markets. (BDA, OCCR) (Memo No. 9869)
5. Docket 34681, proposed final 419 rate of compensation for Air North service at five Upstate New York points. (Memo No. 8486-N, BDA, OCCR)
6. Docket 34802, Wien Air Alaska, Inc. Intra-Alaska Service Mail Rates. (Memo No. 9210-A, BDA)
7. Docket 37588, Palm Beach Environmental Study. (Memo No. 9446-E, 9446-F)
8. Docket 32660, Petition of the International Airforwarder Agents Association for review of staff action. (Memo No. 9865, BIA)
9. Dockets 35634 and 32660, IATA petition for reconsideration of Order 80-4-75. (Memo No. 9567-A, BIA)
10. Docket 37286, Application of Saudi Arabia Airlines Corporation for amendment of its foreign air carrier permit to add Houston, Texas and coterminalize its U.S. points. (BIA, BCP, OGC, BALJ)
11. Docket 37580, Application of TACA International Airlines, S.A. for an amendment to its foreign air carrier permit to operate scheduled all-cargo service. (Memo 9868, BIA, OGC, BALJ)
12. Docket 36916, Application of Redcoat Air Cargo Limited for foreign charter air carrier permit to carry cargo between the United States and the United Kingdom. (BIA, OGC, BALJ) (Memo No. 9867)
13. Docket 33220, Yucatan Service Case. (Instructions to staff)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1582 Filed 8-15-80; 4:35 pm]

BILLING CODE 6320-01-M

## 2

**FEDERAL ENERGY REGULATORY COMMISSION.**

August 13, 1980.

**TIME AND DATE:** 10 a.m., August 20, 1980.

**PLACE:** Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

**Power Agenda—459th Meeting, August 20, 1980, Regular Meeting (10 a.m.)**

CAP-1. Docket No. EL78-43, City of Bountiful, Utah, Utah Power and Light Co., City of Santa Clara, Calif. and Pacific Gas and Electric Co.
CAP-2. Project No. 2811, Public Utility District No. 1 of Klickitat County, Wash.
CAP-3. Docket No. ER80-493, Interstate Power Co.
CAP-4. Docket No. ER76-827 and ER77-427, Minnesota Power & Light Co.
CAP-5. Docket No. ER80-363 Delmarva Power & Light Co.
CAP-6. Docket Nos. ER80-38 and ER80-122, West Texas Utilities Co.
CAP-7. Docket No. ER76-716, Indiana & Michigan Electric Co.
CAP-8. Docket No. ER80-261, Mississippi Power & Light Co.
CAP-9. Docket No. ER80-222, Georgia Power Co.

**Miscellaneous Agenda—459th Meeting, August 20, 1980, Regular Meeting**

CAM-1. Docket No. GP80- , NGPA well category determination, USGS New Mexico, El Paso Natural Gas Co. FERC No. JD 80-34000.
CAM-2. Docket No. GP80-93, State of Louisiana, Section 103 NGPA determination, Conoco, Inc., T. Ortego A. SU, L. L. Welch A No. 17 Well, Louisiana, Docket NGPA #79-3006, FERC JD No. BD-10659.

**Gas Agenda—459th Meeting, August 20, 1980, Regular Meeting**

CAG-1. Docket Nos. RP74-20 and RP74-83, United Gas Pipe Line Company; Docket Nos. RP7-20, et al., (interest reimbursement) United Gas Pipe Line Co.; Docket Nos. RP74-82 and RP74-81, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Corp.; Docket Nos. CP70-22, et al., Michigan-Wisconsin Pipe Line Co.; Docket Nos. RP73-102 and RP73-14 (PGA75-1), Michigan Wisconsin Pipe Line Co.; Docket Nos. RP75-96 and RP76-100, Michigan-Wisconsin Pipe Line Co.; Docket No. RP73-110, Natural Gas Pipeline Co. of America; Docket No. RP75-84, Southern Natural Gas Co.; Docket No. RP73-113, Tennessee Gas Pipeline Co.; Docket Nos. RP774-48 and RP75-3, Transcontinental Gas Pipeline Corporation.; Docket Nos. RP72-23, et al., and RP73-35, Trunkline Gas Co.; Docket No. RP73-35 and RP74-89 (PGA76-1 and AP76-2), Trunkline Gas Co.; Docket Nos. RP74-89 and RP73-35 (AP76-1), Trunkline Gas Co.
CAG-2. Docket No. TA80-2-33 (PGA80-2a), El Paso Natural Gas Co.
CAG-3. Docket No. TA80-2-57 (PGA80-2), Western Transmission Corp.
CAG-4. Docket Nos. AR61-2, et al., and AR69-1, area rate proceeding, et al. (Southern Louisiana); Docket Nos. AR64-2, et al., area rate proceeding, et al. (Texas Gulf Coast); Docket Nos. AR67-1, et al., area rate proceeding, et al. (other southwest); Docket Nos. AR70-1, et al., area rate proceeding, et al. (Permian Basin II).
CAG-5. Docket Nos. RI74-168 and RI75-23, Independent Oil and Gas Assocation of West Virginia.
CAG-6. Docket No. CP80-324, Tennessee Gas Pipeline Co. a division of Tenneco Inc.; Docket No. CP80-336, Transcontinental Gas Pipe Line Corp.
CAG-7. Docket No. CP79-150, Northwest Pipeline Corp.
CAG-8. Docket No. CP80-386, Buckeye-Tennessee Gas Gathering Co.
CAG-9. Docket No. PC79-416, ANR Storage Co.; Docket No. CP79-374, Southern Natural Gas Co.; Docket No. CP79-382, South Georgia Natural Gas Co.; Docket No. CP79-478, Great Lakes Gas Transmission Co.; Docket No. CP79-498, Michigan Wisconsin Pipe Line Co.

CAG–10. Docket No. CP80–337, Eastern Shore Natural Gas Co.
CAG–11. Docket No. CP80–379, Trunkline Gas Co.
CAG–12. Docket No. CP80–280, Tennessee Gas Pipe Line Co., a division of Tenneco Inc.
CAG–13. Docket No. CP74–150, Transcontinental Gas Pipe Line Corp.
CAG–14. Docket No. CP80–384, Michigan Wisconsin Pipe Line Co.

Power Agenda—459th Meeting, August 20, 1980, Regular Meeting.

I. Licensed Project Matters.

P–1. Reserved.

II. Electric Rate Matters.

ER–1. Docket No. ER80–497, Appalachian Power Co.
ER–2. Docket No. ER80–506, Alabama Power Co.
ER–3. Docket No. ER80–492, Idaho Power Co.
ER–4. Docket No. ER80–511, Niagara Mohawk Power Corp.
ER–5. Docket No. ER80–508, Boston Edison Co.
ER–6. Docket No. ER80–495, Iowa Public Service Co.
ER–7. Docket No. ER80–422, Central Vermont Public Service Corp.
ER–8. Docket No. EL80–5, Central Vermont Public Service Corp.
ER–9. Docket No. E–7777 (phase II), Pacific Gas & Electric Co.; Docket No. E–7796, Pacific Power & Light Co.
ER–10. (A) Docket No. E–9563, Bonneville Power Administration (Wheeling rates); (B) Docket No. EF80–2011, Bonneville Power Administration (system rates); Docket No. RM80– , proposed rulemaking on review of Federal rate schedules; (C) Docket No. EF79–4011, Southwestern Power Administration (System rates); (D) Docket No. EF79–4021, Southwestern Power Administration (Sam Rayburn Dam project).
ER–11. Docket No. ID–1839, H. Russell Smith.
ER–12. Docket No. ID–1860, Robert L. Loughhead.

Miscellaneous Agenda—459th Meeting, August 20, 1980, Regular Meeting

M–1. Docket No. QF80–4, Consolidated Water Power Co.—small power production and congeneration facilities—qualifying status.
M–2. Docket No. RM80–65, exemption of small hydroelectric power project of 5 megawatts or less from all or part of part I of the Federal Power Act.
M–3. Docket No. RM79–79, price squeeze—procedural rules; Docket No. RM79–80, price squeeze—substantive rules.
M–4. Reserved.
M–5. Reserved.
M–6. Reconsideration of FERC practice with respect to stays.
M–7. Docket No. RM80–57, amendment to § 1.18 of the rules of practice and procedure.
M–8. (A) Docket No. RM78–15, rules relating to investigations; (B) Docket No. RM80– , delegations to the director of office of enforcement.
M–9. Docket No. RM80–16, disclosed estimation methodology approach for determination of volumes of natural gas used for exempt purposes under the incremental pricing program.

Gas Agenda—459th Meeting, August 20, 1980, Regular Meeting

I. Pipeline Rate Matters.

RP–1. Docket Nos. RP77–107 and RP78–68, United Gas Pipe Line Co.

II. Producer Matters.

CI–1. Docket No. RI79–21, Shell Oil Co.

Kenneth F. Plumb,
*Secretary.*

[S–1546 Filed 8–18–80; 9:47 am]
BILLING CODE 6450–85–M

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3

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Forwarded to Federal Register on August 12, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Wednesday, August 20, 1980.

**CHANGES IN THE MEETING:** One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item has been added to the Summary Agenda:

Proposal for annual Board financial support of the University of Michigan's Survey Research Center. (This matter was originally considered at an open meeting on Wednesday, August 13, 1980.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: August 15, 1980.

Theodore E. Allison,
*Secretary of the Board.*

[S–1561–80 Filed 8–15–80; 4:34 pm]
BILLING CODE 6210–01–M

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4

**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.**

**TIME AND DATE:** 9:00–5:00 p.m., September 5 and 6, 1980 respectively.

**PLACE:** O'Hare/Kennedy Holiday Inn, Rosemont, Illinois.

**STATUS:** Closed.

**MATTERS TO BE DISCUSSED:** Executive session (closed meeting Sec 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703].

**CONTACT PERSON FOR MORE INFORMATION:** Mary Alice Hedge Reszetar, Associate Director, NCLIS, area code 202–653–6252.

Mary Alice Hedge Reszetar
*Associate Director, NCLIS.*

August 11, 1980.

[S–1563–80 Filed 8–15–80; 4:36 pm]
BILLING CODE 7527–01–M

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5

**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.**

**TIME AND DATE:** 9–5:30 p.m., August 22 and 23, 1980 respectively.

**PLACE:** San Francisco Hilton Airport Inn, San Francisco, California.

**STATUS:** Closed.

**MATTERS TO BE DISCUSSED:** Executive Session (closed meeting Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703].

**CONTACT PERSON FOR MORE INFORMATION:** Mary Alice Hedge Reszetar, Associate Director, NCLIS, area code 202–653–6252.

Mary Alice Hedge Reszetar
*Associate Director, NCLIS.*

August 11, 1980.

[S–1564–80 Filed 8–15–80; 4:36 pm]
BILLING CODE 7527–01–M

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6

**NATIONAL RAILROAD PASSENGER CORPORATION.**

(Board of Directors)

In accordance with Rule 4a. of Appendix A of the Bylaws of the National Railroad Passenger Corporation notice is given that the Board of Directors will meet on August 27, 1980.

A. The meeting will be held on Wednesday, August 27, 1980, in the National Guard Association Building, 3rd Floor, One Massachusetts Avenue, Northwest, Washington, D.C., beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation

Meeting of the Board of Directors, August 27, 1980

*Closed Session (9:30)*

1. Internal Personnel Matters.
2. Litigation Matters

*Open Session (10:30)*

3. Approval of Minutes of Regular Meeting of July 30, 1980.
4. Ratify Appointment of Director to Committee.

5. Approval of Consulting Contract for the Design and Implementation of the ARTS Replacement Project.
6. Commitment Approval Requests:
80–165 Retirement and sale of five overage GG1 electric locomotives.
80–157 New Orleans—Modernize and rehabilitate equipment washing facilities.
80–169 Hialeah/St. Petersburg—Provide 480 volt standby service for HEP trains.
80–183 Acquire facility for the Amtrak Institute for Rail Services.
80–184 Purchase Conrail portion of Chicago joint track.
78–33–R1 Modernization of Beech Grove—Phase III.
76–294–S5 Fiscal year 1981 Northeast Corridor purchase.
7. Resolution Adopting Equipment Retirement Policy.
8. Film Presentation: Amtrak TV News.
9. Board Committee Reports:
Equipment.
Finance.
Legal affairs.
Northeast Corridor improvement project.
Organization and compensation.
10. President's Report.
11. New Business.
12. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistant Corporate Secretary at (202) 383–3991.

Barbara J. Willman,
*Assistant Corporate Secretary.*
August 18, 1980.
[S–1565–80 Filed 8–18–80; 9:14 am]

Wednesday
August 20, 1980

Part II

# Department of Health and Human Services

## Social Security Administration

## Federal Old Age, Survivors, and Disability Insurance Benefits

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

**[Regs. Nos. 4 and 16]**

# Federal Old Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** The Department of Health and Human Services has revised the regulations in Subpart P of Part 404 and Subpart I of Part 416 to make them clearer and easier for the public to use. These subparts contain the rules for determining disability and blindness under titles II and XVI of the Social Security Act. We have completely reorganized and rewritten these rules in simpler, briefer language.

We have updated these regulations by including certain policies which we are now following in evaluating disability and blindness. We have also changed the provisions on the amount of earnings we consider representative of substantial gainful activity and on the monetary amount we do not count for trial work period purposes.

These final regulations do not include the regulatory changes which will be required by the recently enacted Social Security Disability Amendments of 1980, Pub. L. 96-265. The changes that we will have to make to our regulations because of this recent legislation will, in general, not change the substance of the policies in these final rules, including policies already being followed which we are placing in our regulations for the first time. We will, however, be making modifications in some limited areas, such as to our policy on the purchase of medical evidence in title II cases, the trial work period, substantial gainful activity, and vocational rehabilitation. We will publish these changes either with notice of proposed rulemaking or as interim regulations, as appropriate, so that the public will have full opportunity to provide views and comments before final rules are adopted.

**DATES:** These regulations will be effective August 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short or William J. Ziegler, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD. 21235, telephone 301-594-7337 or 301-594-7415.

**SUPPLEMENTARY INFORMATION:**

## Revising the Disability Regulations

We have completely revised the regulations under "Operation Common Sense" and in accordance with Executive Order 12044. These regulations describe how we determine disability and blindness for the purpose of paying benefits under the disability insurance program (Part 404) and supplemental security income program (Part 416). These regulations explain (1) the requirements for receiving cash benefits based upon disability or blindness and for getting a "period of disability," (2) the evidence a person must give us when applying for benefits or a "period of disability," (3) how we evaluate the evidence to make a disability or blindness determination on a claim, (4) what we need to know and what a person must do after beginning to receive benefits, and (5) the factors we consider when determining whether a person will continue to receive these benefits or have a period of disability continue.

In order to obtain the public's views and comments before proceeding with these amendments, we published these regulations along with a Notice of Proposed Rulemaking in the Federal Register on July 3, 1979 (44 FR 38879). On March 23, 1979, we published, at 44 FR 17654, interim regulations setting the substantial gainful activity (SGA) level amounts for 1978 and 1979. Then on March 18, 1980, we published, at 45 FR 17131, interim regulations setting the substantial gainful activity level amount for 1980 and thereafter. We have carefully considered all the comments pertaining to the proposed amendments and the interim regulations on the 1978 and 1979 substantial gainful activity earnings guidelines, and we have answered the issues raised in these comments later in the preamble. We will respond to any comments on the 1980 SGA amounts when we publish those regulations in final form. Although we are not finalizing the 1980 figures at this time, we are including them in this recodification since the 1980 figures do have interim effectiveness.

## Our Goals

We have rewritten the disability regulations to make them easier to read and understand. We have tried to remove legalistic language and bureaucratic jargon, and to define the terms we use in simpler language. We have also rearranged the sections to make it easier for persons to find information for which they may be looking.

We have also taken out of the regulations policies which we no longer follow or which we very seldom use. For example, we have deleted the rules for determining disability in 1965 and earlier, before the law was changed.

At the same time we have added to the regulations certain policies which we are now following in determining disability. These are based on provisions of the law and should be included in the regulations. Most of these policies are already in our Program Operations Manual, which State and Federal employees use when evaluating disability. This manual is available for anyone to see at any of our local social security offices. We are also putting into the regulations other policies we have adopted based on our experience in evaluating disability claims over many years. These policies will now clearly apply to all determinations, including appeals.

While legislation has recently been enacted which will require changes in disability regulations, we have not attempted to include any of these changes in this recodification. As previously explained, the purpose of this recodification is to rewrite and clarify existing regulations and incorporate a number of policies (not previously part of our regulations) that we follow in evaluating disability and blindness.

We will publish proposed regulations implementing changes required by this new legislation as Notices of Proposed Rulemaking or as Interim regulations as soon as possible.

## Policies We Are Including in the Regulations for the First Time

### *What We Mean by an Impairment That Is Not Severe*

To receive disability benefits, a person must have a severe impairment. We deny a disability claim if we find that a person does not have a severe impairment. In §§ 404.1521 and 416.921, we explain in more detail that an impairment is not severe when it does not significantly limit a person's physical or mental ability to do those things needed to work. For the first time, we explain what abilities we consider necessary in order for a person to work.

### *When a Person Has Two or More Impairments—Initial Claims*

To get disability benefits or establish a period of disability, a person must have a severe impairment, and the impairment must either be expected to result in death or to last for 12 continuous months or longer. In

§§ 404.1522 and 416.922 we explain that, when a person has two or more impairments, we will evaluate them together to see if they are severe enough to keep the person from doing substantial gainful activity. However, in doing this evaluation, we will only include impairments which are expected to result in death or to last for 12 months or longer.

*The Meaning of Medical Equivalence*

When a person has a severe impairment which is one that is shown in our Listing of Impairments in Appendix 1 or is medically equivalent (equal) to one shown there, we consider that person disabled if he or she is not doing substantial gainful activity. We explain in §§ 404.1526 and 416.926 how we decide whether an impairment is equal to a listed impairment. If a person's impairment is not listed, we will consider the listed impairment most like the person's impairment to decide whether it is medically equal. If the person has more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about the impairments against the listed impairments most like the person's impairment. We will then decide whether we can consider the combination of impairments medically equal to any listed impairment.

*Medical Evidence of Disability*

We have stated more clearly what we consider acceptable medical evidence by listing acceptable sources and by describing the required content of medical evidence (See §§404.1513 and 416.913). We have also added osteopaths, optometrists, and psychologists to the list of acceptable medical sources.

*When We Will Purchase Medical Evidence*

There has been some confusion about our policies on when we will pay for medical evidence. In § 416.914 we explain that we will usually pay for medical evidence for a person who is applying for supplemental security income benefits based on disability or blindness. We will always pay for this medical evidence when we decide that we need it to make a determination of disability or blindness. We may pay for the evidence in other situations. In § 404.1514 we explain when we will pay for medical evidence for a person who is applying for title II disability benefits. We pay for it only in limited situations.

*Consultative Examination at Our Expense*

Sometimes we must arrange a special medical examination for a person to get the information we need to make a determination. In §§ 404.1517 and 416.917, we explain when we may ask a person to go for one of these special examinations. Frequently, we need more detailed medical information or a technical, specialized medical test which a person's treating physician cannot give us or do for us. Sometimes, we must resolve a conflict or difference in medical findings in the evidence we already have. In these sections we also point out that we will give the examiner information about the person we are sending for the examination. We will always tell the person the purpose of the examination and the name of the examiner before the examination.

*Failure To Appear at a Consultative Examination*

If a person does not go to an examination so that we do not get information we need to determine disability or blindness, we may find that the person is not disabled or blind, unless he or she had a good reason for not going. In §§ 404.1518(b) and 416.918(b) we give examples of what we consider good reasons for not going to an examination. These include being ill on the day of the examination, not receiving sufficient notice from us, receiving incorrect information from us, or having a death or serious illness in the family.

*How We Evaluate Subjective Symptoms, Including Pain*

In §§ 404.1529 and 416.929 we explain how we evaluate pain and other subjective symptoms. We recognize that the effects of pain and other subjective symptoms can usually be evaluated by clinical and laboratory diagnostic techniques.

*Residual Functional Capacity*

We consider a person's residual functional capacity when we are deciding whether a person is able to do his or her past work or other work. Residual functional capacity is generally the physical and mental abilities a person still has which enable him or her to work even though these abilities are limited because of his or her impairment. In §§ 404.1545 and 416.945, we explain how we determine residual functional capacity. Anyone qualified to make medical judgments may assess residual functional capacity. Qualified persons include treating or examining physicians, consultative physicians, and State agency physicians at the initial and reconsideration levels. While there are no preferred sources, the final responsibility for the assessment at the initial and reconsideration levels is with the State agency staff physician. For cases at the hearing and Appeals Council level, the responsibility for assuring that the assessment of residual functional capacity is supported by the evidence in file rests with administrative law judges or members of the Appeals Council.

*Impairments Which May Warrant a Finding of Presumptive Disability or Presumptive Blindness*

Under certain circumstances, we may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before we make a formal determination of disability or blindness. We call these payments presumptive disability and presumptive blindness payments. We only make these payments when it appears, on the basis of the available evidence, that the person is disabled or blind. If we decide later, after we get more evidence, that the person is not disabled or blind, he or she will not have to pay back the money we have already paid to him or her. In § 416.934, we give examples of 10 specific impairment categories where we will make a presumptive determination before we get any more medical evidence. We have been making presumptive payments on the basis of these impairment categories for several years.

*When Vocational Factors Are Considered*

In §§ 404.1560 and 416.960, we explain what evidence we will need when we cannot make a decision about whether a person is disabled on medical evidence alone. We will need information about the person's age, education, and work experience, as explained below. We may also need additional medical evidence to determine that person's residual functional capacity. If we find that the person cannot do work he or she has done in the past, we will use authoritative publications and, in some cases, the services of vocational experts, to determine what range of work or specific occupations, if any, he or she can do. These jobs must exist in significant numbers in the national economy. We define "significant numbers in the national economy" in §§ 404.1566 and 416.966.

*Age as a Vocational Factor*

In §§ 404.1563 and 416.963, we explain when we will ask a person to prove his

or her age. We do not generally do this. However, if we need to know a person's exact age to determine whether he or she is disabled, or if the amount of the benefit will be affected, we ask for proof of age.

*Education as a Vocational Factor*

In §§ 404.1564 and 416.964, we explain what information we need to know about a person's education to make a disability determination. We will ask how long a person attended school, and we will also consider how much formal or informal education a person has had through previous work, community projects, hobbies, and any other activities which may help a person to work. We will also consider any information which shows that the formal education may not have given the person as much education as the grade level might show.

*Work Experience as a Vocational Factor*

In §§ 404.1565 and 416.965, we explain what information we may need about a person's work experience. If we need to consider whether that person can do past work or work that is different from what he or she did in the past, we will ask for a description of jobs done in the last 15 years. This will include job duties, tools, machinery and equipment used, and physical and mental activities. However, if all the work that the person did in the last 15 years was hard labor and unskilled, and that person has very little education, we ask about all the work the person did since he or she first began working. If a claimant has only a marginal education and long work experience (e.g. 35 years or more) where he or she did only arduous unskilled physical labor; and he or she can no longer do this kind of work; we use a different rule to determine disability (see §§ 404.1562 and 416.962). With this additional information, we can tell if the claimant qualifies for benefits under this rule. We also explain that we consider past work experience to be work that will help the person work now if the work at any skill level was done within the past 15 years, lasted long enough, and was substantial and gainful.

*Work Which Exists in the National Economy*

We explain in §§ 404.1566 and 416.966 that, in determining whether unskilled jobs requiring sedentary, light or medium exertion exist in the national economy in significant numbers in one or more regions of the country, we will use reliable job information available in various governmental and other publications. We also explain that we may use the services of a vocational expert or other specialist when there is a question about whether the work skills used in past work can be useful in doing other work and the kinds of jobs or specific occupations in which they can be used.

*Substantial Gainful Activity*

In §§ 404.1574, 416.974, and 404.1584 we list the rules on determining whether a person is engaging in substantial gainful activity. In §§ 404.1575 and 416.975, we have added evaluation guides for self-employed persons and have explained what we mean by significant services by self-employed persons. Whether a person is doing significant services depends upon how much he or she is involved in the management of the business. Significant services are important in determining whether a self-employed person is doing substantial gainful activity.

*Subsidies*

We explain in §§ 404.1574(a) and 416.974(a) how we evaluate earnings when a person is receiving a subsidy. Subsidies are payments by an employer to an employee for more than the reasonable value of his or her work. We exclude subsidies in determining whether work is substantial gainful activity. When the employer does not set the amount of the subsidy or does not adequately explain how he or she figured the subsidy, we will try to develop how much the work is worth.

*Responsibility To Notify Us of Discharge From a Hospital*

We no longer require a person to tell us when he or she is discharged from a hospital or similar institution. We have found that release from a hospital is not a reliable indication of recovery from disability. Also, advances in medical treatment have reduced the average period of hospitalization, and more people are now receiving treatment outside hospitals. Elimination of this reporting requirement (1) relieves the beneficiary of a responsibility, (2) eliminates premature, unproductive investigations, (3) reduces costs to the Government and (4) reduces inconvenience to beneficiaries. We are updating §§ 404.1588 and 416.988 to reflect this change.

*We May Investigate Whether Disability or Blindness Continues*

After we find that a person is disabled or blind, we may determine from time to time if he or she is still disabled or blind. We may begin an investigation for this purpose for any number of reasons, including the person's failure to follow the requirements of the Social Security Act or these regulations. If our investigation shows that we should stop benefits, we will tell the person and give him or her a chance to reply. We explain these policies in §§ 404.1589 and 416.989. In §§ 404.1590 and 416.990, we discuss the events which will prompt us to investigate whether a person is still disabled.

*If Medical Recovery Was Expected When a Person Returned to Work*

In §§ 404.1591 and 416.991 we explain that when a person who has an impairment which is expected to improve, returns to full-time work with no significant medical limitations, we may determine that he or she is no longer disabled as of the first month in which he or she returned to work.

*Why and When Disability May Be Determined To Have Stopped*

In §§ 404.1579, 404.1586, 404.1594 and 416.994 we explain a new policy on when disability is considered to stop. At one time we would not find that disability or blindness had stopped unless the medical evidence showed that the person's condition had improved since we last determined that he or she was disabled. About three years ago, we changed this policy and began to find that disability or blindness had stopped if we found, on the basis of new evidence, that the person was not disabled or blind as defined in the law.

*Before We Make a Determination That Disability Stopped*

In § 404.1595 we explain that we will always give a person advance notice before we make a final determination that he or she is no longer disabled, unless that person already knows our decision. For example, the person may have told us that he or she was no longer disabled. In this notice, we will tell the person the reason why we have decided that he or she is no longer disabled and allow the person a chance to answer and give us additional information.

*When We May Stop Benefits Before Making a Final Determination*

We explain in § 404.1596 when we will stop payments before determining whether a person is still disabled. We will do this to prevent an overpayment, when a beneficiary does not cooperate in a continuing disability investigation, or if his or her whereabouts are unknown.

*When a Person Becomes Disabled by Another Impairment*

In §§ 404.1598 and 416.998 we explain how we treat a person who gets another impairment. If a person already receiving benefits becomes disabled by another impairment, the new impairment need not be expected to last 12 months or result in death in order for us to find the person still disabled. However, the new impairment must be severe enough to prevent substantial gainful activity and must begin in or before the month in which the last impairment ended.

*The Trial Work Period*

We explain our policies on the trial work period in § 404.1580, 404.1585, 404.1592 and 416.992. The trial work period is a period during which a disabled person may test his or her ability to return to work. If a disabled person does return to work, that person may work for 9 months (which do not have to be consecutive) before we evaluate this work. We consider any month in which a person performs services to be a trial work month. In §§ 404.1592 and 416.992, we define "services" to mean any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for remuneration, generally pay or profit, or is the kind normally done for remuneration. For an employee, we consider work "services" if his or her earnings after 1978 are more than $75 a month. For a self-employed person, we consider work "services" if his or her net earnings after 1978 are more than $75 a month or if the time spent in work is more than 15 hours a month. Before 1979, we used $50 a month as the amount of earnings considered to show "services".

*The Appendices*

The medical criteria and the medical-vocational guides used in making disability determinations were previously appendices to both subpart P of Part 404 and subpart I of Part 416. Except for Part B of Appendix 1 to subpart I, these appendices are the same, word-for-word, and were repeated at the end of both subparts only for ease of reference. Part B of Appendix 1 contains medical criteria applicable to children and, since they apply mainly to claims under title XVI, were located only in Part 416. However, Part B also applies in some cases under the title II disability insurance program. In this recodification we have taken the appendices out of Part 416 and located them only in subpart P of Part 404. This eliminates some of the unnecessary repetition in our regulations and is consistent with the goals of "Operation Common Sense." We have made the changes needed to cross-refer subpart I of Part 416 to the appendices in Part 404.

*Social Security Disability Amendments of 1980*

These final regulations do not include the regulatory changes which will be required by the recently enacted Social Security Disability Amendments of 1980, Public Law 96-265. The changes that we will have to make to our regulations because of this recent legislation will, in general, not change the substance of the policies in these final rules, including policies already being followed which we are placing in our regulations for the first time. We will, however, be making modifications in some limited areas, such as to our policy on the purchase of medical evidence in title II cases, the trial work period, substantial gainful activity, and vocational rehabilitation. We will publish these changes either with notice of proposed rulemaking or as interim regulations, as appropriate, so that the public will have full opportunity to provide views and comments before final rules are adopted.

Public Comments

We received comments on 95 sections of the proposed disability regulations involving over 150 different issues. Most of the comments we received came from legal aid services and other organizations involved in representing disability claimants. We also received a large number of suggestions from persons involved in the administration of the disability program.

Many of the comments we received were favorable toward our rewriting the disability regulations in simpler language. These commenters believe that we have made these regulations easier to read and understand. They also think the regulations are better organized and that information they need will be easier to find. For example, one person stated he found "the regulations to be much more comprehensive and understandable." Another person stated that she found the "rules easily readable and easily understood." Another person commented that "they are much easier to understand and include many policies which have been unwritten in the past." Still another person stated that the regulations are far more understandable, which is a "step in the right direction."

On the negative side, several people complained about our adding new material to the regulations. Generally, they believed that we should not have included new rules in the regulations at the same time we were rewriting them for clarity and ease of understanding. According to these comments, it is difficult to determine exactly what is new to the regulations and what is merely a rewritten version of the previous regulations. Some of these people questioned whether the policies we included in the regulations for the first time were actually being followed by the Social Security Administration. One person stated that "the Operation Common Sense procedure is not the place for substantive changes." Another person stated that the Notice of Proposed Rule Making (NPRM) was misleading because the summary indicated that the purpose was to rewrite the affected subparts in simpler language.

However, "Operation Common Sense" has other objectives in addition to rewriting the regulations in plain language. Some of these objectives, which we explained in the preamble to the NPRM, include updating the regulations to include important policies and removing from the regulations outdated policies we no longer follow. In the preamble, we clearly identified the policies we were including in the regulations for the first time.

We have made several changes on the basis of comments we received from the public.

One of the changes we made concerns the rule about the need to follow prescribed treatment. Under our proposal, if we believed that treatment might enable a person to work, we could send him or her to a physician at our expense for a medical opinion on treatment. In determining whether treatment could correct the impairment enough so that the person could work, we intended to consider that physician's findings and recommendations along with any other medical findings and recommendations we had received from the person's treating physician or any other medical source. Under this proposed rule, we would not have paid benefits to a person who refused to follow treatment we determined could correct the impairment enough to enable him or her to work, unless there was good reason for the person to refuse the treatment.

Because of the many critical comments we received concerning this proposed rule and the issues raised in these comments, we have not adopted this change in policy. Instead, we will continue to follow the same rule which we have followed in the past. Under this rule, which we have kept in the regulations, we only require that a person must follow treatment prescribed

by his or her own physician or other treating source.

Also, because of the many public comments which questioned the need for certification of records from hospitals and other similar institutions, we have changed our position. We will not return these records for certification unless there seems to be something questionable about them.

We have added optometrists to the list of acceptable medical sources for the measurement of loss of sight. However, we have pointed out that in some cases we may still need a report from a physician to determine other aspects of eye diseases.

Many persons pointed out to us an error in our explanation of how we evaluate symptoms, including pain. In the NPRM we stated that we would never find a person disabled based on symptoms, including pain, alone. Since we do find persons disabled on the basis of pain and other symptoms, we have explained in the final regulations that there must be medical signs or findings to show that there is a medical condition that could reasonably be expected to produce the symptoms.

We have decided to remove Appendix 1, Listing of Impairments, and Appendix 2, Medical-Vocational Guidelines, from Subpart I of Part 416 and include them only in Subpart P of Part 404. While we received some objections about doing this, we believe the advantages in not duplicating this material in Chapter III of Title 20 of the CFR outweigh the negative considerations.

In these final regulations, we have not made any significant changes in the appendices, since they were recently revised and updated. [Appendix 1, the medical criteria, was published in the Federal Register on March 27, 1979 (44 FR 18170), and Appendix 2, the vocational guidelines, was published in the Federal Register on November 28, 1978 (43 FR 55349)]. We have only corrected some errors and references.

We have replaced the term "wages" wherever it appears with the broader term "pay". This change makes it clearer that we are referring to any compensation (it does not have to be cash) a person receives for his or her services and avoids confusion with "wages" as that term is defined in section 209 of the Social Security Act.

We have also made other changes of a clarifying nature.

There follows a discussion of issues which were raised in the comments made by the public in response to the NPRM published in the Federal Register on July 3, 1979 (44 FR 38879). We discuss these comments under the appropriate section headings. Many of the written comments we received necessarily had to be condensed, summarized, or paraphrased. However, we have tried to express everyone's views adequately and to respond to the issues raised.

**General**

*Scope of Subparts*

*Comment:* A legal aid bureau objected to our stating in §§ 404.1501(a) and 416.901(a) that disability determinations by other programs have no effect on our determinations.

*Response:* Determinations under other programs are considered in our evaluation of disability and blindness. Our intention was to make clear that we must make our own determinations based on social security law. Therefore, we have changed the statement to read "determinations made under other programs are not binding on our determinations."

**Determinations**

*Who Makes Disability and Blindness Determinations*

*Comment:* A person representing a legal aid bureau commented that §404.1503(d) should read exactly the same as § 416.903(d) in order to allow us to find an earlier disability date, a later date for ending disability, or a disability when the State agency found none. According to this person, there is no basis for this difference between the title II and title XVI disability programs.

*Response:* Section 221(c) of title II of the Social Security Act provides that as a result of reviewing title II disability determinations by State agencies, we may only determine that a person is not disabled, or that disability began later, or that disability ended earlier. We may not under title II change any State agency's decision to a more favorable one for the person claiming benefits. On the other hand, under section 1633 of title XVI of the Act, there are no restrictions upon our changing a State agency's disability determinations concerning supplemental security income benefits. Since the differences in these sections are in the law, we cannot adopt this comment.

**Definition of Disability**

*Basic Definition of Disability*

*Comment:* A legal aid bureau objects to the basic definition of disability in §§404.1505 and 416.905 because the definition does not state that other substantial gainful activity must exist in significant numbers in the national economy.

*Response:* These sections introduce the basic definition of disability which is further explained in later sections concerning the evaluation of disability. Under Vocational Considerations, §§ 404.1566 and 416.966, we adequately explain that we consider work to exist in the national economy when it exists in significant numbers either in the region where a person lives or in several other regions of the country. Consequently, we have not adopted this comment.

*Additional Changes:* We have added a statement to § 404.1505(a) to make clear that the basic definition of disability applies when a person is applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

*Disability for Children Under Age 18*

*Comment:* Several persons commented that § 416.906 and related sections, by requiring children under age 18 to have an impairment which meets or equals the Listing of Impairments in order to be found disabled, are in conflict with the statutory language in section 1614(a)(3)(A). According to these comments, the law only requires a child under age 18 to have a medically determinable physical or mental impairment of comparable severity to that which would be disabling for an adult. An adult may be found to be disabled on the basis of vocational considerations even when the impairment does not meet or equal the Listing of Impairments. Therefore, according to these comments, we are requiring children under age 18 to have an impairment of greater severity than an adult in order to be found disabled. In their views, this requirement exceeds the test of comparable severity provided in the law and is not authorized under the law as in the case of disabled widows and widowers under title II of the Act.

*Response:* The title XVI definition of disability for children under age 18 does not specifically exclude the consideration of vocational factors. However, the use of vocational factors is not appropriate since the activities of children under age 18 are extremely difficult to measure in vocational terms. In view of this, it is more equitable to evaluate childhood claims only on medical terms—i.e., the impairment must meet or equal the Listing of Impairments. However, many conditions have a different effect on children than on adults, and for this reason a supplemental Listing of Impairments is also used for children. This supplement realistically expands the area of medical consideration for children, and lessens

any inequity that could result because of the absence of vocational evaluation. Therefore, we are not making any changes in this section.

*What Is Needed To Show an Impairment*

*Comment:* On commenting on §§ 404.1508 and 416.908, one person took the position that a disability claimant should be able to rely solely on statements of symptoms in a clinical setting. This person believes that under the law symptoms alone may support a finding of disability.

*Response:* Sections 404.1508 and 416.908 state that an impairment must be established by medical findings consisting of signs, symptoms and laboratory findings. These sections, however, go on to state that disability cannot be found on the basis of a statement of symptoms alone.

A history of symptoms, recorded in a clinical setting, is important to the evaluation of disability, and this is recognized in the regulations. However, it is essential for the regulations to specify that a statement of symptoms alone is not sufficient for a decision. The law requires that disability be determined on the basis of a medically determinable impairment. Symptoms, in the absence of any confirming signs or clinical findings, cannot meet this requirement.

*Comment:* Another person pointed out that §§ 404.1508 and 416.908 mention signs, symptoms, and laboratory findings but that these are not defined until later in §§404.1528 and 416.928. This person recommends that we cross-refer these sections.

*Response:* We agree with the comment and have added a cross reference.

Evidence

*Your Responsibility To Submit Evidence*

*Comment:* Several persons, some of whom represented legal advocacy groups, commented that §§ 404.1512 and 416.912 place too heavy a burden upon claimants by requiring them to submit medical evidence to prove disability. Some of these persons pointed out that under the title XVI supplemental security income program, which is based on need, the Secretary has a special obligation of obtaining medical evidence on behalf of the claimant.

*Response:* We will always assist a person in obtaining the medical evidence we need to make a disability determination. However, the person must give us the names and addresses of physicians and other treatment sources and give us permission to obtain the evidence on his or her behalf. For a person applying for supplemental security income benefits, we will pay for the medical evidence if there is any charge. When we need special medical information which a person's treating sources cannot give to us, we will send the person for medical examinations and tests at our expense. However, the person must cooperate with us in obtaining the medical evidence.

In order to clarify our responsibility, we have added the following statement to §§ 404.1512 and 416.912: "We will help you in getting medical reports when you give us permission to request them from your doctor and other medical sources."

*Comment:* One person objected to the language in §§ 404.1512 and 416.912 which states that we will only consider impairments which the claimant tells us about or about which the claimant gives us evidence. This person pointed out that the claimant may not be aware of what is wrong with him or her, the diagnoses may be imcomplete, or the interviewer may not have obtained all the information.

*Response:* We agree that we should not rely solely on the claimant's statements and the evidence which the claimant gives us. Therefore, we have changed the language in these sections to make it clear that we will consider impairments about which we receive evidence in addition to impairments about which the claimant tells us. Of course, we cannot be expected to consider impairments of which we are reasonably not aware.

*Comment:* Another person from a legal service foundation commented that the claimant should at least be advised of which reports we considered in making the disability determination.

*Response:* In making a disability determination, we consider all the medical evidence we receive about a person's medical condition. We do not routinely identify each of these medical sources when we inform the person of our decisions about disability. However, this information is available to him or her upon request.

*Medical Evidence of Your Impairment*

*Comment:* Two persons, representing a professional association, commended us for including "licensed or certified psychologists" under acceptable medical sources in §§ 404.1513 and 416.913. However, these same persons pointed out that other related sections pertaining to medical evidence refer only to "physicians" when discussing medical evidence. According to these persons, the term "health care providers" would be more appropriate.

*Response:* One of our main reasons for revising the regulations is to make them easier to read and understand. We believe that simply using the term physician in these sections accomplishes this purpose better than using the more general and abstract term "health care provider." The sections in which we use the word physician focus on issues which are not directly concerned with the source of the medical evidence. In sections that are directly concerned with the qualifications of persons giving us evidence, we have made it clear that acceptable evidence is not limited to reports from physicians. Therefore, we have not adopted this comment.

*Comment:* Another person, representing a professional association, recommended that "licensed or certified optometrists" be added to the list of acceptable sources in §§ 404.1513 and 416.913. According to this comment, we should include optometrists because doctors of optometry are licensed by all 50 states and are qualified to supply reports on visual impairments within their speciality.

*Response:* We agree with the comment and have added optometrists as an acceptable source for the measurement of loss of sight (the measurement of visual acuity and visual fields). However, we have also pointed out that we may need a report from a physician to determine other aspects of eye diseases.

*Comment:* A representative of a professional association stated that the limitations which we place upon reports from optometrists in § 404.1513 is unnecessary and inconsistent with the education of optometrists and the scope of their license to practice. According to this comment, requiring a report from a physician when a report from an optometrist would be sufficient needlessly increases costs by requiring an extra, unnecessary eye examination. This policy is also said to arbitrarily discourage the use of doctors of optometry under the title II disability program.

*Response:* Under the provision of this section, we accept findings from optometrists on the measurement of visual acuity and visual fields without restriction, on the same basis as we accept a report from a physician. However, we require a physician's findings to determine other aspects of an eye disease that are essential to establish a medically determinable impairment. These aspects include diagnosis and treatment. We need this information to determine whether surgery or other therapy might correct or improve sight to the extent that the

impairment would no longer be disabling. Also, in some cases, we have found that another health problem requiring evaluation by a physician is the cause of the visual loss rather than an eye disease.

Since the regulations must cover the entire range of diseases that result in loss of sight, we believe it is essential to maintain a statement placing limits on the use of evidence submitted by optometrists.

Program costs are not appreciably increased by this requirement, nor does it mean that a person must undergo two examinations, one by a physician and another by an optometrist. We make most of our determinations for all types of impairments, by using reports of past treatment, without the need to obtain an examination for the specific purpose of the disability determination. In the case of visual impairments, persons applying for benefits usually have medically records that are not restricted to an examination by an optometrist. Physicians, whether private or serving in a clinic, are still the first source of contact for most health problems. Also, optometrists frequently make referrals to physicians for consideration of surgery or other therapy. By the time a visual impairment has become so severe that a person applies for disability benefits, there is usually evidence available from a physician who has diagnosed the disease and prescribed treatment.

*Comment:* Another person, representing an assistance group, commented that §§ 404.1513 and 416.913 should not limit the sources from which we may obtain medical records. He pointed out that in many urban and rural areas medical clinics are staffed primarily by nurses and physician assistants. These practitioners provide useful medical reports.

*Response:* Under paragraph (e) of these sections, we explain that information from sources other than a licensed physician may assist us in evaluating a person's ability to work. We do accept reports from nurses, physician assistants, and other similar practitioners.

*Comment:* Several persons, including representatives from various legal aid groups, objected to the requirement that medical records from hospitals, clinics, sanatoriums, medical institutions, and health care facilities be certified by the custodians of the records. They believe that certification is unnecessary and would cause needless delay in obtaining medical reports.

*Response:* The certification requirement stated in §§ 404.1513(a) and 416.913(a) in the NPRM did not represent any change in the regulations. In following the previous regulations, however, we always accepted medical records from hospitals and other similar institutions as long as it was clear that the reports came from the hospital or institution. We considered the signature of the custodian, the letterhead, the covering letter, or other similar information sufficient for this purpose. We did not generally require certification in a legal sense. In order to avoid confusion in the future, we have modified the language in these sections to state that while these records should be certified, we will not return uncertified records unless there seems to be something questionable about them.

*Comment:* Another person pointed out that we should delete the reference to licensing in §§ 404.1513(e) and 416.913(e), since the practitioners we are referring to are actually licensed in most States for the practice in which they specialize.

*Response:* We agree with this comment, and we have eliminated the wording "not medically licensed."

*When We Will Purchase Existing Evidence*

*Comment:* One person from a legal service foundation pointed out that it would be less expensive for us to purchase existing medical records under the title II disability program than to refer persons for consultative examinations at our expense.

*Response:* Section 416.914 explains that we will pay for existing medical evidence for persons applying for supplemental security income benefits under title XVI of the Act. However the title II law does not allow us to routinely purchase existing medical evidence. Section 404.1514 explains that in rare situations we will pay for existing medical records under title II disability program when the only other way we can get the medical information we need is to refer the person for an expensive consultative examination. Generally, we do this when there are indications that the person is disabled but is unable to pay for the medical records. If we find that the medical sources have the additional information we need for making a disability determination but will not give it to us until they are paid, we may pay them a small fee to cover copying and mailing costs.

*Additional Changes:* In § 416.914 we explain that we always pay for existing medical evidence we request for use in making title XVI disability or blindness determinations. However, in the NPRM we added that we would pay for evidence we use even if we did not request it and that we might also pay for evidence we receive even if it is not needed as long as the person applying for benefits or the medical source believed that the evidence was needed. We have decided not to include these additional statements in the final regulations. These situations do not occur often enough to require regulations. Removing these statements does not mean that we will no longer pay for evidence which we did not request or need for the disability or blindness determination. As in the past, we will continue to make these decisions on a case-by-case basis. For example, we may pay for a report from a physician who submits evidence requested by a patient without knowing that sufficient information has already been sent to us by a hospital. We cover this in our operating instructions.

*If You Fail To Submit Medical and Other Evidence*

*Comment:* One person from a legal service foundation commented that the claimant should be notified of which physicians or hospitals refused to give us evidence. According to the comment, we should also inform the claimant about what records we will pay for.

*Response:* We will notify the claimant if there are any problems in obtaining medical records from any of his or her treating or examing medical sources. We usually assist the claimant in contacting these sources again in order to obtain the reports. Often we refer the claimant for a special medical examination at our expense if we cannot get the reports we need from his or her own physicians and hospitals.

At the time of the initial interview, we generally tell supplemental security income claimants what medical evidence we will pay for. When we refer a claimant for a consultative examination, we give him or her a pamphlet explaining the reasons for the examination. We also explain that the examination is at our expense. Therefore, we see not reason for making any changes in the language in §§ 404.1516 and 416.916.

*Comment:* One person commented that these regulations are not supported by the legislative history of the title XVI disability program, because Congress intended that the burden of obtaining medical evidence for claimants rests upon the Secretary.

*Response:* We recognize in § 416.914 that we have the responsibility of obtaining medical evidence for supplemental security income claimants. In § 416.916 we ask only that the person cooperate with us in obtaining the medical evidence. We specifically state

that we will pay for this evidence if we find it is needed to evaluate the claim.

*Comment:* Sections 404.1516 and 416.916, according to one person, are not equitable, because failure to submit medical evidence will result in a denial under these regulations. This person believes that § 416.916 is especially inequitable for title XVI disability claimants. According to the comment, the "good cause" provisions for failure to appear for a consultative examination should be extended to failure to submit medical records.

*Response:* We always consider whether or not a person has good reason for failure to submit medical reports. However, we do not believe that it is necessary to give examples of "good cause" for failure under these sections. We agree that we cannot find a person not disabled merely for failure to give us medical evidence. Therefore, we are changing the language in these sections to explain that we will always make a disability determination on the basis of the evidence available to us.

*Additional Changes:* We have added an explanation to § 416.916 that a person will not be excused from giving us evidence because of religious or personal reasons against medical examinations, tests, or treatment. This rule was stated in the NPRM in § 404.1516 but was erroneously omitted from § 416.916, where it also applies.

*Consultative Examination at Our Expense*

*Additional Changes:* Upon further consideration, we have expanded § 416.917 to make it clear that we will not pay for any medical examinations arranged by a claimant or his or her representative without being asked by us. The reason we are adding this statement is because in some situations, claimants or their representatives have been arranging for medical examinations at our expense without first consulting with us. Frequently, we have found that the examination report only duplicated information already available to us or was not necessary for making a disability determination.

*If You Do Not Appear at a Consultative Examination*

*Comment:* One person from a legal aid bureau stated that in §§ 404.1518 and 416.918 we should make it clear that the listed examples of good reasons for not going to a consultative examination are not "all-inclusive." This person suggested that we include another example for not going to an examination: "For other valid reasons."

*Response:* These sections already state that the person must have a good reason for failing or refusing to take part in a consultative examination or test which we arrange to get information we need for a disability determination. We ask a person who is unable to go to an examination to tell us why as soon as possible. We explain that if the person has a good reason, we will schedule another examination or try to get the information we need in another way. The reasons listed are described only as "some examples of what we consider good reasons for not going to a scheduled examination." Therefore, we believe it is clear that these are not the only reasons which we will consider valid.

*Comment:* Another person commented that "inconvenient or unreasonable scheduling" should be included as a good reason for not going to a consultative examination.

*Response:* The examples we provided in §§ 404.1518 and 416.918 are only guidelines of what we consider to be good reasons for not going to a consultative examination. If the claimant cannot keep an appointment, he or she should notify us immediately. We explain this to the person when we arrange a special examination for him or her. If the claimant has a good reason, such as inconvenient time or place causing genuine hardship, we will reschedule the examination. The examples of good reasons are not the only acceptable reasons. We must consider other reasons on an individual basis.

*Comment:* Several persons commented about our excusing a claimant from going to a consultative examination on the basis of "having had professional or personal contact with the scheduled examiner and believing that the examiner could not be objective." One person believed that we should also consider objections to the examinations made by the claimant's representative, such as his or her attorney. Other persons commented that this example would permit a claimant to refuse an examination without any showing of bias on the examiner's part. According to these comments, the claimant would only need to assert that he or she believed, on the basis of past experience, that the examiner could not be objective. Some persons believe that the claimant should be obligated to submit evidence to show that the examiner could not be objective. Still another person pointed out that the claimant in some cases is mentally ill and could refuse an examination on the basis of delusions.

*Response:* In proposing this example of good reason for not going to an examination, we had a specific type of case in mind. Sometimes, without knowing all the circumstances, we refer a claimant for a consultative examination with an examiner who previously represented an interest adverse to the claimant. For example, the examiner may have represented the claimant's employer in a worker's compensation case, or he or she may have been involved in an insurance claim or legal action adverse to the claimant. In this situation, we would consider the claimant to have good reason for refusing a consultative examination with the examiner on the basis of possible bias or partiality on his or her part.

In view of the fact that this listed example has been misinterpreted by so many people, we have decided to remove it from the examples of good reasons for failure to appear for a consultative examination. Removing it from the listed examples, however, does not mean that we will no longer consider bias, prejudice, partiality, or lack of objectivity on the part of the examiner as a good reason for refusing an examination. The purpose of the examples in §§ 404.1518 and 416.918 is to give clearcut situations where the claimant would have good reason for refusing an examination. We will still consider all other reasons given by the claimant.

*Comment:* Other persons commented that we should spell out in §§ 404.1518 and 416.918 any adverse consequences for failure to report for a consultative examination.

*Response:* If a person will not go to a consultative examination, we must, of course, make the disability determination on the basis of whatever evidence is available to us. Since we usually send a person for a consultative examination when the evidence we already have is not sufficient to show disability, the refusal to go to the examination could result in our determining that the person is not disabled.

Evaluation of Disability

*Evaluation of Disability in General*

*Comment:* One person objected to §§ 404.1520(b) and 416.920(b), because they provide a sequential evaluation in which a claimant may be found not disabled on the basis of doing substantial gainful activity without considering medical or vocational factors. According to this comment, the claimant's medical condition must always be considered, especially since some people force themselves to work to meet expenses, even though the work

tends to worsen their physical or mental impairment.

*Response:* We consider the concerns expressed in this comment under §§ 404.1571–404.1575 and 416.971–416.975, which deal with substantial gainful activity in more detail. In §§ 404.1520 and 416.920 we give only a brief explanation of the steps we follow in evaluating disability in general. Each of the steps is explained more fully in other sections of the regulations.

After considering this comment, however, we have decided to change §§ 404.1520(b) and 416.920(b) to provide that if a person is doing substantial gainful activity, we will find that he or she is not disabled regardless of his or her medical condition, age, education, and work experience. This language is more in conformity with the law. Sections 223(d)(4) of Title II and 1614(a)(3)(D) of Title XVI of the Social Security Act provide that a person whose earnings meet the criteria established by the Secretary for determining when services or earnings demonstrate ability to engage in substantial gainful activity shall be found not disabled. The law provides that this is true *notwithstanding* the person's physical or mental impairment or his or her age, education, and work experience. We have made this change because we believe that the word "regardless" conveys the meaning of the law more clearly than "without considering." In fact, in some cases, we may have considered the medical evidence and vocational factors before becoming aware that the claimant was actually doing substantial gainful activity during the period of time in which we are considering whether he or she is disabled.

*Additional Changes:* In §§ 404.1520 and 416.920, paragraph (f)(2), we have changed the notation "e.g." to "i.e.", to make the insert in the parentheses read "(i.e., 35 years or more)." This change has been made because the 35 years requirement is not an example. See §§ 404.1562 and 416.962 for a further explanation of this rule.

*What We Mean by an Impairment That Is Not Severe*

*Comment:* We received a letter from one person who made extensive comments on the denial of claims on the basis of nonsevere impairments, as described in §§ 404.1521 and 416.921. The commenter contends this principle introduces an "average man" concept that conflicts with the law and with court interpretations of the law, both of which require consideration of the claimant's circumstances in each case. This person also feels that it is difficult to define with accuracy impairments that are not severe, and suggests that it would be more realistic, and just as economical, to evaluate these impairments in terms of the vocational impact in each case. This person pointed out, further, that if an impairment is truly minimal, it should not be difficult to make the decision using the vocational considerations described in §§ 404.1545 through 404.1568 and 416.945 through 416.968.

*Response:* Although this evaluation approach to impairments that are not severe has been in the regulations for some time, we expanded it in 1978, when we published the more detailed regulations describing the principles used in vocational evaluation. (43 FR 55349).

We anticipated that greater program efficiency would be obtained by this provision, by limiting the number of cases in which it would be necessary to follow the vocational evaluation sequence described in §§ 404.1545 through 404.1568 and §§ 416.945 through 416.968.

We are now attempting to determine whether this advantage has been realized. The reasons for this are in part due to the problems discussed by this commenter. In most cases that involve an impairment that is not severe, the vocational evaluation guides can be applied as efficiently as can the nonsevere impairment principle. Most cases of this kind do not require extensive investigation of a person's vocational background in order to evaluate them under the vocational guidelines. We can decide many cases of this type on the basis that a person can return to his or her most recent occupation. Also, defining an impairment that is not severe can sometimes be as judgmental as a decision based on vocational considerations.

We are now studying the feasibility of a possible revision of this rule. However, the rule proposed in §§ 404.1521 and 416.921 is included in this final publication since it reflects current policy. Any future revision we make in the basic concept will be published in the Federal Register with an opportunity for the public to comment.

*When You Have Two or More Unrelated Impairments—Initial Claims*

*Comment:* Several persons representing legal services commented that §§ 404.1522 and 416.922 are inconsistent with the law, in that two impairments, each disabling for 6 months, should be sufficient to meet the requirement that disability must last for 12 months. According to these comments, these two sections conflict with §§ 404.1598 and 416.998, which allow disability to continue under a new impairment, which is not expected to last for 12 months. One person stated that nowhere in the law is there any indication that two separate impairments cannot be combined to total a 12 month period.

*Response:* Under the law, in determining whether the 12 month duration requirement is met, we must look at each impairment to see how long it has lasted or is expected to last. We cannot consider in our determination any impairment lasting, or expected to last, less than 12 months. This is not inconsistent with §§ 404.1598 and 416.998, which concern determinations on whether disability continues for persons who are receiving disability benefits. These sections provide that a new impairment superimposed on a disabling impairment which has ended extends disability so long as it is disabling, even though it is expected to last less than 12 months. This is because the duration requirement is a requirement only for initial entitlement to benefits. Once we find a person to have a qualifying impairment(s), we cannot find that disability has ended, as long as he or she continues to have an impairment severe enough to prevent substantial gainful activity.

*Comment:* One person commented that §§ 404.1522 and 416.922 violate court interpretations of the statutory language pertaining to the 12-month duration requirement. According to this comment these sections adopt a "retrospective" viewpoint.

*Response:* These sections explain how we evaluate multiple impairments to determine whether they meet the duration requirement, which is the requirement that the disabling impairment must last or must be expected to last for a continuous period of 12 months. We do not intend to apply these sections in retrospect. Rather, we will apply them at the time when the disability determination is made, and in most instances the rule will affect only the first month for which we pay a disability benefit. For example, a person who suffers a leg fracture and then two months later, before complete recovery from the fracture, develops a chronic and disabiling heart condition, will not be determined to be disabled until the onset of the heart condition, assuming that we have evidence to show that the leg fracture is a temporary impairment that cannot be expected to last 12 months.

*Comment:* One person from a legal assistance agency objected to the word

"severe" in §§ 404.1522 and 416.922. This commenter believes that this qualification is contrary to the Act, because it implies that all impairments, even ones lasting or expected to last twelve months, will no longer be considered in evaluating disability.

*Response:* The sections cited in this comment concern the duration requirement; i.e., the requirement that disability must last twelve months. These sections explain that an impairment of short duration cannot be combined with another unrelated impairment to meet the twelve-month duration requirement. The reference to *severe* impairments is merely meant to confirm that there would be no concern with how long an impairment has lasted, or is expected to last, unless it is severe. The duration requirement does not come into consideration until it is first established that an impairment is disabling at some point in time.

*Comment:* Another person stated that the NPRM is misleading because nowhere in the preamble summary is there any reference to §§ 404.1522 and 416.922. This person claims that the Social Security Administration has never followed the policy in these sections about unrelated impairments. According to this comment, the NPRM should be republished with a clear statement that this is an entirely new policy which was never followed in the past.

*Response:* The preamble of the NPRM did include a summary of these sections on page 38880 of Volume 44 of the Federal Register. We also stated in the preamble that we were adding to the regulations the important policies which we were following in determining disability. We further pointed out that most of these policies were already in our Program Operations Manual which State and Federal employees use when evaluating disability.

The policy stated in these sections is not in the Program Operations Manual, since we only recently adopted the policy about a year before the publication of the NPRM but after a long period of consideration. Therefore, the policy was appropriately announced in the NPRM. Although this policy was being followed at the initial and reconsideration level, it was not binding upon administrative law judges and the Appeals Council, since they are only required to follow the law, the regulations, and Social Security Rulings in deciding cases. On page 38880 of the preamble we specifically stated that we were including our basic policies in the regulations, since it is desirable that the same rules apply at all levels of adjudication.

*Additional Changes:* In order to clarify the meaning of this section, we have revised the second sentence to read: "If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last 12 months, we cannot find you disabled, even though the two impairments may in combination last for 12 months."

**Medical Considerations**

*Listing of Impairments*

*Comment:* Several persons commented about our taking the Listing of Impairments (Appendix 1) and the Medical Vocational Guidelines (Appendix 2) out of Part 416 and including them only in Part 404. One person stated that it is contradictory to "Operation Common Sense" to fragment the organization of related regulations. According to this commenter, the title XVI and the title II disability programs are essentially independent to each other and share only common administration. According to another comment, many persons are involved in only one of these programs and keep only the law and regulations concerning that program. This person believes that removing these appendices from Part 416 will impede the researching of disability issues. Another person noted that he only receives title II regulations from Commerce Clearing House (Unemployment Reports). This person recommended that we publish all the regulations common to both programs in one place in the Code of Federal Regulations (CFR).

*Response:* One of the objectives in rewriting the regulations under "Operation Common Sense" is to eliminate overlapping and duplicate material in order to insure that paperwork costs and other burdens on the public are minimized. This is an important part of the Department's program to revise, rewrite, and reduce the more than 6,000 pages of the Department's regulations in the CFR.

Both Appendix 1 and Appendix 2 were formerly located in two places, behind Subpart P of Part 404 and behind Subpart I of Part 416. The criteria in these appendices, the medical listings and the vocational guidelines, apply to both the title II and the title XVI disability programs. These appendices are exactly the same, except for Part B of Appendix 1, which was previously located only behind Subpart I of Part 416, because Part B mainly applied to the evaluation of disability for children under age 18 for purposes of the Supplemental Security Income program. However, Part B also applies in some cases under the title II disability insurance program.

In order to eliminate this duplication of material, which is exactly the same, we have published Appendix 1 and Appendix 2 only behind Subpart P of Part 404. This eliminates some of the unnecessary repetition in our regulations and is consistent with the goals of "Operation Common Sense." We have cross referenced Subpart I of Part 416 to the Appendices in Part 404. These references clearly show that we are using the same Appendices for two separate disability programs. Since Parts 404 and 416 are both published in Chapter III (Parts 400 to 499) of title 20 of the CFR, this material is available to everyone in one volume of the CFR.

*Comment:* One person, representing a legal aid bureau, stated that our revision of §§ 404.1525 and 416.925 requires that a claimant who has a listed impairment must prove the 12-month duration requirement. This person observed that under the previous regulations, if a claimant's medical condition met a listed impairment, we presumed that the 12-month duration requirement was met. According to this comment, this significant, additional requirement is unwarranted.

*Response:* The majority of the impairments listed in Appendix 1 do not require a separate decision on the duration of the impairment. This is because the majority of the described medical conditions are either static or become more severe with the passage of time. However, some impairments are also listed which are subject to improvement in some cases. If we revised the listing to include only impairments in which the duration requirement can be presumed, we would have to exclude many impairments that are subject to improvement. We believe that it is in the public interest to list as many impairments as possible. Therefore, we will no longer presume that the duration requirement is met merely because an impairment is listed in Appendix 1.

*Comment:* One person from a legal service agency commented that the Listing of Impairments requires overly restrictive standards for wage earner claimants, because the listing describes impairments severe enough to prevent a person from doing any gainful activity. This person observed that the law requires a more stringent standard of disability for surviving spouses, who must be unable to do gainful activity to be found disabled. Therefore, this person believes that the listing requires a worker to be as functionally limited as a surviving spouse.

*Response:* If a worker has an impairment which meets the duration requirement and is listed in Appendix 1, or is equal to one of the listed impairments, we will find that worker disabled on the basis that he or she is unable to do any gainful activity. This is the requirement that widows, widowers, and surviving divorced wives *must* meet in order to be found disabled. However, unlike the surviving spouse, we may still find the worker disabled even when he or she does not have any impairment which meets or equals a listed impairment. A worker who has an impairment severe enough to keep him or her from doing previous work may be found unable to do any substantial gainful activity, considering his or her age, education, and work experience. We agree with the comment that in order for us to find that the worker is disabled on medical considerations alone, the worker must meet the same standard of disability established by law for widows, widowers, and surviving divorced wives. However, this is not the only standard which we consider in evaluating the worker's claim.

*Additional Changes:* In §§ 404.1525 and 416.925, we have revised the last sentence in paragraph (a) to point out that the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months. In paragraph (b)(1) we have changed "similar impairment impact" to "similar effect" for clarity.

*Medical Equivalence*

*Comments:* Several comments were received on determining medical equivalence under §§ 404.1526 and 416.926. These included a comment questioning whether there has been a change in these regulations that would now require claimants to have an impairment that is medically equivalent to a listed impairment in order to be found disabled. Others commented on the complexity involved in these decisions, and whether it was proper to make this decision by comparing the person's impairment(s) with the listed impairment most like it.

*Response:* Nothing new has been added. Medical equivalence is still only one aspect of disability evaluation. It is used whenever claimants have a severe impairment or combination of impairments that do not meet the specific findings contained in a listing. If evaluation for medical equivalence does not result in a disability allowance, we must still consider whether the claimant is unable to do any substantial gainful activity by reason of the impairment(s), considering the vocational factors of age, education and work experience.

These decisions are complex, as pointed out by one of the commenters. In order to make these decisions as accurately as possible, however, we make all decisions of medical equivalence on the basis of medical judgments furnished by physicians in the disability program who are familiar with the medical requirements.

A comparison is made with the listed impairment most like the claimant's impairment to see if it is as severe. Each listed condition is independent, and the listed findings represent a point of severity for that particular condition at which we no longer consider it reasonable or necessary to consider vocational factors under the guidelines described in §§ 404.1560 through 404.1569 or §§ 416.960 through 416.969

*Conclusions by Physicians Concerning Your Disability*

*Comment:* One person representing a legal service foundation commented that §§ 404.1527 and 416.927 are impermissible in light of the substantial body of case law indicating that the uncontradicted conclusion of a physician is entitled to "great weight." This person further stated that the treating physician's conclusion as to the existence of disability, if uncontradicted, is "binding" upon the Secretary.

*Response:* In these sections we explain that under the law we are responsible for making the disability determination on the basis of the evidence. Opinions by physicans about "disability" or "the ability to work" are not binding upon us. While we carefully consider these opinions, there must be sufficient evidence to support conclusions. When there is insufficient evidence to support an opinion, we ask for additional evidence. However, we must make our determination on the basis of the evidence and not on the basis of an opinion alone and some court decisions have criticized us for not obtaining sufficient evidence.

*How We Evaluate Symptoms, Including Pain*

*Comments:* One person from a legal service foundation objected to the statement in §§ 404.1529 and 416.929 that "we will never find that you were disabled based on your symptoms, including pain alone." According to this comment, the statement violates case law indicating that pain itself can be disabling. Another person, representing a legal aid bureau, believes that these sections must be deleted, because the requirement of objective proof before subjective symptoms can be accepted is contrary to long-standing principles of law that "pain," unaccompanied by any objectively observable symptoms, will support a claim for disability benefits. Another legal service representative stated that all the courts have held that subjective medical evidence, even including pain unsupported by objective medical evidence, will support a finding of disability. Still another person from a legal aid foundation stated that these sections fail to account for the fact that pain is outside the realm of objective scientific measurement and cannot be diagnosed by laboratory and clinical procedures. According to another comment, these sections fail to recognize that pain can be separate from any particular syndrome and can be part of an overlay of multiple medical problems and physical inactivity, or even of undiagnosed but very real conditions. One person agreed that the source of pain must have a medical verification but considered the sections "overbroad" and contrary to the law. Other persons expressed similar objections to these sections.

*Response:* In including these sections in the regulations for the first time, we did not intend that pain itself must be objectively measured. We only require proof that there is a medical condition producing the pain. After we verify that there is a medical condition which can be expected to cause pain, we can evaluate any medical evidence submitted to determine whether the pain is disabling. Pain that is of such long duration and severity as to be significant for disability evaluation is, almost without exception, verifiable by clinical signs and findings showing a medical condition that can be reasonably expected to produce the pain. We do not require that a specific diagnosis be established, but, in practice, the medical signs and findings that show the presence of a medical condition consistent with pain will also permit a diagnosis in most cases.

After reviewing these comments, however, we realize that the language in the last sentence of these sections is unclear. It could be read to mean that we never find a person disabled when the only limitation is severe pain. We intended that there must be other signs and findings that show there is a medical condition present that can be reasonably expected to result in severe pain. We have rewritten the last sentence to clarify that pain, in itself, or other symptoms, can be disabling. This sentence now reads: "We will never find that you are disabled based on your symptoms, including pain, unless

medical signs or findings show that there is a medical condition that could be reasonably expected to produce these symptoms." In the second sentence, we have also removed the word "objective," since "signs and laboratory findings" are objective by definition.

*Need To Follow Prescribed Treatment*

*Comment:* Many persons objected to the change in policy which we proposed in §§ 404.1530 and 416.930 of the NPRM. Under this proposal, in order to receive benefits, a person would have to follow treatment which we determined would restore his or her ability to work, even if the treatment had not been prescribed by his or her own physician. In addition to the adverse comments which we received from members of the public, physicians and other Federal and State personnel involved in the day-to-day administration of the titles II and XVI disability programs also expressed serious concerns about this proposed change in our policy. A few comments agreed with this proposal, but most comments pointed out its disadvantages. Several persons representing legal aid services commented that relying on the viewpoint of a consulting physician who sees a claimant for a single examination, rather than on an attending physician who is actually treating the claimant, would be "unduly harsh and restrictive." Several persons believed that this change in policy would be an interference in the doctor-patient relationship. Some doctors thought that this policy "would be fraught with marked malpractice liability." A representative from a legal aid bureau expressed the opinion that this new requirement may cause injury to a claimant's physical or mental condition, because a consulting physician is not qualified to prescribe mandatory treatment. According to other attorneys, this provision is beyond the scope of the law and contrary to court decisions. Others pointed out that the proposed rule "gives much too much weight to consulting physicians" and that the claimant should have some freedom in deciding on whose treatment to follow. Others questioned whether consulting physicians would be willing to assume this responsibility.

*Response:* We have decided not to adopt that proposed rule. From the beginning, we recognized that this proposal would require careful administration on our part. We would have only applied this proposed rule to medical conditions which we carefully evaluated. We had intended to limit the proposed rule to medical conditions where it is clear that the recommended treatment conforms to widely accepted medical standards. Admittedly, we would have had difficulty in accomplishing this goal while administering a nationwide program that requires us to consider the wide variety of impairments that might produce disability and the treatment for these medical conditions.

Our intent in proposing the change in policy was to eliminate situations where we are paying disability benefits to persons who would be able to return to work if they followed appropriate treatment. By obtaining another medical opinion about appropriate treatment, we might encourage some disabled persons to seek treatment to correct their medical condition. However, there are probably few people receiving disability benefits only because of lack of proper treatment. Therefore, the proposed change in policy would have little effect on the total cost of disability benefits.

In view of the potential problems which were pointed out in the comments, we are not adopting this proposed rule. In deciding whether a person is following treatment which would restore his or her ability to work, we will continue our past policy of only considering treatment that has been prescribed by a treating source. We have revised §§ 404.1530 and 416.930 along these lines.

*Comment:* One person commented about the examples of good reasons for not following prescribed treatment. According to this comment, the example in paragraph (c)(2) of §§ 404.1530 and 416.930 is not appropriate, because one cannot meet the Listing of Impairments, which applies to both eyes, by having a very severe problem with one eye alone.

*Response:* We agree with this comment. Therefore, we have revised the example to show that a person would have good reason for refusing cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision that is not subject to improvement through treatment.

Presumptive Disability and Blindness

*When Presumptive Payments Begin and End*

*Comment:* One person representing a legal aid bureau commented that paragraph (c) of § 416.932 is an additional condition for cessation of presumptive disability. This person stated that this condition should be published as a substantive change and not as part of "Operation Common Sense," since it is not in the prior regulations.

*Response:* The condition in paragraph (c) was previously published as a final regulation in § 416.952 in the Federal Register on April 24, 1978 (43 FR 17354). It read as follows: "(c) The month in which a non-medical factor of entitlement is no longer met." This described one of the conditions which would end payments based on presumptive disability or presumptive blindness. In the NPRM, we rewrote this paragraph to read: "(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits)." We did not intend to make any change in the rule but only to state more clearly what we mean by "a non-medical factor of entitlement".

*Impairments Which May Warrant a Finding of Presumptive Disability or Presumptive Blindness*

*Comment:* One person observed that the list of impairments in § 416.934 which warrant a finding of presumptive disability or presumptive blindness without obtaining medical evidence is completely new to the regulations. This person belives that we should have published this list of impairments separately as a proposed substantive change and not as a part of "Operation Common Sense", in which it was "slipped in" with other regulations. This person also believes that the section should at least include a statement that the list is not meant to exclude other possibilities.

*Response:* We stated in the preamble of the NPRM that we were including in the regulations for the first time the important policies which we were already following. We highlighted this addition on page 38881, where we stated that "in § 416.934, we give examples of 10 specific impairment categories where we will make a presumptive determination before we get any more medical evidence." We also pointed out that we have been paying presumptive payments on the basis of these impairment categories for several years. Those categories were already listed in our operating manuals. On the second point, based on our experience, we have listed impairments that are observable or can be judged without medical evidence and have a high degree of probability of a finding of disability or blindness. In other cases we need some other evidence. In § 416.933, we already explain how we make a finding of presumptive disability or presumptive blindness in other cases in which the medical evidence shows a high degree of probability that disability or blindness exists.

**Drug Addiction and Alcoholism**

*Medically Determined Drug Addicts and Alcoholics*

*Comment:* One person pointed out that § 416.935 no longer includes the phrase in the previous rule which defined "contributing factor" as "material to the finding of disability." This person stated that the phrase has a specific legal meaning, narrower and clearer than "contributing factor" and should be retained in the new section, even though it may not be considered as ordinary language.

*Response:* We agree with this comment, and we have restored the phrase "material to the finding of your disability" in order to more clearly define the meaning of contributing factor."

*Treatment Required for Medically Determined Drug Addicts and Alcoholics*

*Comment:* One person objected to § 416.936 because it omits language from the previous rule that made it clear that ineligibility for failure to accept and comply with treatment applies only to those months in which there was noncompliance. This person believes that the language "for such month" should be retained because without it the section could be interpreted to permit permanent cessation of payments, requiring the claimant to make a new application and undergo a new determination of disability in order to become eligible again.

*Response:* We agree with the comment, and we have added the phrase "for any month" to make it clear that we are only referring to the month of noncompliance.

**Residual Functional Capacity**

*Your Residual Functional Capacity*

*Comment:* One person, in discussing §§ 404.1545 and 416.945, noted that "sensory characteristics" were included with physical abilities in paragraph (b), while only skin impairments and epilepsy were mentioned as examples of impairments other than physical or mental ones in paragraph (d).

*Response:* We agree that these paragraphs in the sections are confusing. Accordingly, we have deleted "and sensory characteristics" from paragraph (b) and we have added to paragraph (d) the phrase "impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions."

*Comment:* Another person commenting on §§ 404.1545 and 416.945 stated that in determining residual functional capacity, it is not clear what we mean by the statement that we will consider other factors, such as a claimant's description of the impairment, when we cannot make a decision on medical findings. This person questioned whether a claimant's description of the impairment is not in fact the same as medical findings of his symptoms to be considered along with signs and laboratory findings.

*Response:* The determination of residual functional capacity is based on a medical assessment, and often requires descriptions or observations that go beyond those symptoms that are important for medical diagnosis and treatment. These observations by examining physicians relate to physical limitations that affect work and not necessarily to medical findings that relate to the treatment of the claimant's condition. The claimant's own description of how an impairment limits capacity to work may also be helpful. These descriptions and observations are then considered together with the claimant's complete medical record. Sections 404.1545(a) and 416.945(a) have been revised to clarify these points. Additional material has also been added to emphasize that the determination of residual functional capacity is not in itself a determination of disability, but is used together with the vocational guidelines to make a disability determination.

*Comment:* One person commented that we should consider a claimant's pain in determining residual functional capacity.

*Response:* Since pain, as a symptom, is a medical finding, we do consider a claimant's pain in making a decision about residual functional capacity. How we evaluate pain, and other symptoms, is described in §§ 404.1529 and 416.929.

*Responsibility for Assessing and Determining Residual Functional Capacity*

*Comment:* A person representing a legal aid bureau expressed concern that §§ 404.1546 and 416.946 require administrative law judges to accept conclusions by physicians. This person believes that the sections should specifically provide that while a physician's judgment as to residual functional capacity should be considered, it is in no way binding on the trier of fact, such as the administrative law judge, who has the responsibility to reach a finding of fact on this issue.

*Response:* We agree that the responsibility of the administrative law judge and the Appeals Council should be defined in these sections. Therefore, we have revised the language to make it clear that the administrative law judge, or Appeals Council, has the responsibility for deciding the claimant's residual functional capacity on the basis of the medical evidence for cases at the hearing or Appeals Council level.

*Comment:* One person objected to §§ 404.1546 and 416.946 because current medical forms are inadequate for furnishing a medical assessment by the treating physician as required by the regulations.

*Response:* These sections state that a treating or examining physician, State Agency physician, or any other physician designated by the Secretary may make an assessment and determination of the residual functional capacity. These sections, however, do not indicate that the treating or examining physician is the preferred source for the assessment of the claimant's residual functional capacity. Therefore, we ordinarily do not ask the treating physician to make an assessment.

**Vocational Considerations**

*When Your Vocational Background Will Be Considered*

*Comment:* A person from a social service agency believes that the provision in § 416.960(a) that states that vocational factors do not apply to supplemental security income (SSI) claimants who are eligible for benefits because of blindness will cause problems for rehabilitation agencies. This person interprets this section to mean that those who meet the blindness eligibility requirements under the SSI program can continue to receive benefits indefinitely, even though they may have acquired skills through vocational rehabilitation and have obtained successful employment.

*Response:* The law does not give us the discretion to decide whether vocational factors should apply to the blind as well as to the disabled. Title XVI of the Social Security Act provides two distinct benefit categories for people with impairments: disability and blindness. To receive benefits based upon blindness, the person must meet the requirement of statutory blindness by having central visual acuity of 20/200 or less in the better eye with the use of correcting lens or an equivalent limitation in the field of vision. By law the determination is made on the basis of medical considerations alone without the need to consider vocational factors. There is no requirement that the blind person be unable to work. However, if the blind person is working, we will consider the earnings under the income

and resources provisions of the law. This means that if the blind person's income and resources exceed the limitations under the law, that person will not be eligible for benefits even though blind. See §§ 416.981–416.985, which explain the policies of the SSI program with respect to blindness.

*If You Have Done Only Arduous Unskilled Physical Labor*

*Comment:* A representative from a legal aid bureau stated that §§ 404.1562 and 416.962 seem to limit the application of the rule that is stated in those sections to persons who have worked a minimum of 35 years in arduous unskilled physical labor. This person pointed out that the prior regulations explaining this rule stated "e.g., 35 to 40 years," which implied that the 35-year limit is only an example.

*Response:* In order for us to apply this particular rule the claimant must have done arduous unskilled labor for at least 35 years and now be unable to do this kind of work because of a severe impairment. Generally, this means that the claimant is an older person. Since the claimant must also have no more than a marginal education, we are able to make a determination of disability on the basis of these seriously adverse vocational factors without considering whether the claimant has qualifications for doing other work. However, when a claimant has done arduous unskilled labor for less than 35 years, this does not mean that we will deny the claimant's application. We look further at the claimant's vocational background, including age, education, and work experience, and may find that the claimant has no qualifications for other work. In §§ 404.1520 and 416.920, we have also changed the "e.g.," to "i.e.," in paragraph (f)(2) to clarify that the 35-year requirement is not merely an example.

*Your Age as a Vocational Factor*

*Comment:* One person representing a legal aid bureau observed that §§ 404.1563 and 416.963 omit the statement in the prior regulations which provided that the age categories "are not to be applied mechanically in borderline situations." According to this comment, this is an important provision which protects claimants from arbitrary and unreasonable treatment where their age is very close to a different category. Another person asked whether we intended to delete this provision.

*Response:* We agree that this provision is important, and we have restored it.

*Your Work Experience as a Vocational Factor*

*Comment:* One person considered it inconsistent that §§ 404.1565 and 416.965 provide "that your work experience applies when it was done within the last 15 years, lasted long enough (usually six months to a year) for you to learn to do it" and that §§ 404.1568 and 416.968 state that, as to unskilled work, "a person can usually learn to do the job in 30 days."

*Response:* We agree. We did not intend by the parenthetical guidance "(usually six months to a year)" to preclude consideration of a shorter period of relevant work. This language could cause confusion. Therefore, we have deleted it from these sections.

*Comment:* Another person believed that someone not familiar with the disability program could confuse the term "earnings requirements" with "substantial gainful activity" and suggested that we use different wording than "earnings requirements."

*Response:* We have adopted this suggestion. Accordingly, we have substituted the term "disability insured status" in § 404.1565. In § 416.965 we have deleted the statement about when the earnings requirement was last met, since there is no insured status requirement under the Supplemental Security Income Program.

*Work Which Exists in the National Economy*

*Comment:* One person questioned how "technological changes in the industry" could affect employability as do the other factors in paragraph (c) of §§ 404.1566 and 416.966.

*Response:* All of the seven items we listed in paragraph (c) refer to the inability to *get* a job, as opposed to the physical or mental inability to *do* a job. Technological changes, such as automation in the industry in which a person worked, may eliminate certain jobs or require greater skills or different skills.

*Comment:* Another person commented that §§ 404.1566 and 416.966 make it possible for administrative law judges or the Appeals Council to take administrative notice of not just the existence of jobs but also the tasks involved in jobs. According to this comment, this is a function for a vocational expert.

*Response:* We take administrative notice of unskilled occupations only. These occupations are entry occupations, requiring no prior experience, and can be learned after a short demonstration or within 30 days on the job. Since the tasks involved in unskilled occupations are so elementary, vocational experts would contribute little to the decisions involving vocational adjustment to this work. The unskilled occupations we refer to in Appendix 2 to Subpart P of Part 404 were taken by us from the *Dictionary of Occupational Titles,* Third Edition, published by the Department of Labor.

*Additional Changes:* After further consideration, we have decided to expand paragraph (c) of §§ 404.1566 and 416.966 by adding item (8) to explain that we will also find a person not disabled if his or her residual functional capacity and vocational abilities make it possible to do work which exists in the national economy, but the person remains unemployed because he or she does not wish to do a particular type of work.

In paragraph (e), which explains the use of vocational experts and other specialists, we have added a sentence to make it clear that we have the discretion to decide whether to use a vocational expert or other specialist.

*Physical Exertion Requirements*

*Additional Changes:* In §§ 404.1567 and 416.967, we have revised the first sentence of paragraph (e) to read: "Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more." In the NPRM, we defined very heavy work as involving "lifting objects weighing 100 pounds or more." This was an error on our part. The definitions of physical exertional requirements are standard definitions in the *Dictionary of Occupational Titles,* published by the Department of Labor.

*Skill Requirements*

*Comment:* One person stated that §§ 404.1568 and 416.968 should include the additional information in Appendix 2 of Subpart P about transferability of skills when dealing with older workers.

*Response:* Sections 404.1568 and 416.968 relate to transferable skills in general, while Appendix 2 gives specific guidance for evaluating the work skills of persons who are limited to sedentary or light work. We believe that it is not appropriate to combine these approaches. Further, neither the regulations proper nor the Appendix 2 provisions stand alone but must be used together.

*Comment:* Another person questioned whether a case-by-case approach is necessary for determining a claimant's work skills and the transferability of these skills to specific occupations.

*Response:* Transferability of skills is not an issue in most disability claims. In

many cases, we determine on the basis of medical considerations alone whether or not a claimant is disabled. In other cases, the principal disability issue is related to whether the claimant can do her or her usual work or other past relevant jobs. See §§ 404.1520 and 416.920 for the steps we follow in making a disablity determination. Transferability of skills only becomes an issue in the last step after we have determined that the claimant has a severe impairment which prevents him or her from doing past relevant work. Before we can make a decision on this issue, we must first make findings about the claimant's residual functional capacity, age, education, and work experience. To determine whether the claimant's skills are transferable to other jobs, we use reference materials such as the *Dictionary of Occupational Titles.* In some cases, we use the services of vocational experts or work evaluation centers for determining whether skills are transferable.

*Additional Changes:* We have revised the last sentence in paragraph (d)(3) of §§ 404.1568 and 416.968 to make it clear that we do not consider all jobs in mining, agriculture, and fishing to be so specialized that skills are not transferable.

*Listing of Medical-Vocational Guidelines in Appendix 2*

*Comment:* One person commented that we should identify by name and *Dictionary of Occupational Titles* number the separate sedentary and light unskilled occupations we refer to in §§ 404.1569 and 416.969.

*Response:* These jobs are described in the *Dictionary of Occupational Titles,* which is published by the Department of Labor. One can find the physical demands and skill requirements of jobs in the Supplement to the *Dictionary of Occupational Titles.* Since this information is already available, we see no purpose in publishing another list of these jobs. We state in §§ 404.1566 and 416.966 that we will take administrative notice of the *Dictionary of Occupational Titles* and other job information available from various government and other publications.

*Comment:* One person stated that it was difficult to understand the 65-word opening sentence in §§ 404.1569 and 416.969. This person believed that a cross-reference to Appendix 2 would be sufficient.

*Response:* We agree that the sentence is too long, and we have revised the language. However, we believe that a mere cross-reference is not sufficient, since this section is an important link to Appendix 2.

**Substantial Gainful Activity**

*General Information About Work Activity*

We received no comments directly on §§ 404.1573 and 416.973. However, we realized, on our own further review that the titles to these sections are misleading, since these sections do not contain evaluation guides. The guides are found in §§ 404.1574 and 404.1575 and §§ 416.974 and 416.975. We therefore changed the titles of these two sections from "Evaluation Guides for Work Activitity" to "General Information About Work Acvitity." In addition, we added a reference in § 416.973 to Subparts K and L of Part 416 to specify where the income and resource provisions may be found. This change was prompted by a comment made by an SSI recipient about the substantial gainful activity earnings guidelines.

*Evaluation Guides if You Are an Employee*

Comments received following publication of the interim regulations on the 1978 and 1979 SGA amounts have been considered along with the comments received following publication of the NPRM for this recodification.

*Comment:* A writer from an association of retired people felt that our reference to "a mentally handicapped person" in §§ 404.1574 and 416.974 seems to bring medical factors into the discussion of what constitutes SGA when the work is done under special circumstances.

*Response:* We did not intend to create that impression. We used that only to be illustrative. We referred to the mentally handicapped since they are the ones most likely to be engaged in doing simple tasks under supervision such as we describe. We have, however, deleted the word "mentally" to avoid any future misunderstandings.

*Comment:* Several commenters felt that the upper level figures are too low and thus act as disincentives for people to return to work, since in some cases it is possible for a person to receive more money by continuing to draw benefits than by working. A commenter from a State rehabilitation agency feels that a better indicator would be the Federal minimum wage multiplied by the number of hours (generally 35 to 40 hours a week) considered to be full-time employment. A writer from a State department of health and social services suggested raising the upper level SGA amount to correspond more closely with the poverty level. This same writer, when commenting on the interim regulations setting the SGA levels for 1978 and 1979, had suggested that the upper limit guidelines for disabled SSI recipients be made the same as the income exclusions for SSI recipients age 65 or over. Two other writers, a representative from a vocational rehabilitation institute and a representative from a vocational rehabilitation training center, also felt that the income guidelines should be the same as the income exclusions for SSI recipients age 65 or over. A representative of a facility for the mentally retarded wrote that the upper level guidelines applicable to all disabled persons should be made the same as for persons disabled by blindness who are receiving title II disability benefits.

*Response:* We have not adopted any of these suggestions. We are, however, trying to find ways to eliminate, where possible, the apparent disincentives in the current SGA guides for impaired persons to reenter the work force or to attempt rehabilitation. We have been studying various alternatives to the current guides to find out whether there is a more effective way of evaluating a person's work activity. A number of alternatives are being considered, including keeping the upper limit equal to the Federal minimum wage or to the poverty level. However, the increases in the SGA limit amounts are kept consistent with specific economic indicators, and increases beyond the amounts indicated by those indicators cannot be fiscally justified without statutory authority. Recently enacted legislation provides that extraordinary work expenses will be excluded from a person's earnings when applying the SGA earnings guidelines. We will publish a notice of proposed rulemaking to implement this provision as soon as possible.

In addition, the legislation authorizes experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of disabled beneficiaries under the disability program. Plans are now being developed to set up and carry out experiments under this authority.

*Comment:* A recipient of supplemental security income disability benefits wrote that she has recently learned that her monthly earnings, although considerably less than the upper SGA amounts, may affect her SSI benefit. She does not understand why her earnings, which are considerably less than the amount normally considered to show that a

person has done substantial gainful activity, should affect her SSI benefit.

*Response:* Under the SSI program, eligibility for benefits and the amount of the benefit payable are dependent in part upon the amount of a person's income. As the amount of a person's countable income rises, his or her benefit payment is reduced. All earnings, therefore, must be evaluated under the income and resources provisions of the law. This evaluation is completely independent of any determination as to whether a person's work activity shows that he or she is doing substantial gainful activity. One evaluation has no affect upon the other. In the commenter's case the earnings, although nowhere near the upper SGA limits, still had to be evaluated for their effect, if any, on her monthly benefit amount.

*Comment:* A legal services agency interpreted the guides in §§ 404.1574(b)(2) and 416.974(b)(2) to mean that when a person's earnings are less than the amount shown in these sections we presume that person to be disabled; that is, that the person cannot do any substantial gainful activity. He then reasons that work at less than the lower limits ($190 for 1980) constitutes gainful activity as opposed to substantial gainful activity and believes that it is incumbent upon us to prove, when denying a widow/widower claim, that there are jobs which the claimant can perform, which pay less than the lower SGA limits.

*Response:* These sections do not provide a presumption that a person is disabled. The lower limits in §§ 404.1574 and 416.974 are merely monetary guides to help us determine whether a person is engaging or has engaged in substantial gainful activity. Sections 404.1520 and 416.920 set out the steps we follow in making a disability determination. When a person is working, the first step we follow is to see if the work is substantial gainful activity. We use the earning levels for this purpose. Earnings that exceed the upper level ordinarily demonstrate that the person is able to engage in substantial gainful activity. Earnings below the lower level ordinarily indicate that the person is not engaging in substantial gainful activity. However, the fact that the earnings are below the lower level does not necessarily indicate that the person does not have the ability to engage in substantial gainful activity. We still must proceed to the other steps. Only then can it be determined whether the person cannot do any substantial activity and is disabled.

Unlike the determination of other disability claims, the determination of a widow, widower or surviving divorced wife claim does not involve a decision as to the existence of other jobs that a person could do. Under section 223(d)(2)(B) of the Act, such a claim is decided based on the severity of the impairment(s). A detailed discussion of how the determination is made on such a claim is contained in §§ 404.1577–404.1580.

*Comment:* In commenting on the sequential evaluation process a writer from an association of retired people expressed concern that these regulations introduce the concept of "actually" or "currently" engaging in substantial gainful activity without consideration of whether a person has the ability to engage in substantial gainful activity.

*Response:* What a person has done is important to us when determining whether he or she is able to do substantial gainful activity. We consider any work a person has done, along with all the other vocational and medical evidence on file, to determine whether he or she is able to do substantial gainful activity.

*Additional Changes:* We amended the earnings guidelines in §§ 404.1574(b) (1) and (2) and 416.974(b) (1) and (2) to reflect the earnings limits applicable to earnings after calendar year 1979. In addition, we changed the title sentences of §§ 404.1574(a)(1) and 416.974(a)(1) to make them more consistent with the remaining paragraphs of §§ 404.1574 and 416.974. We changed the reference to "work" in the last sentence of §§ 404.1574(a)(1) and 416.974(a)(1) to "substantial gainful activity" to more clearly show that our concern is with whether a person is able to do substantial gainful activity. We rewrote the last sentence in paragraph (a)(4) of §§ 404.1574 and 416.974 to clearly show that medication and equipment are only examples. The discussion was not intended to be limited to only those two items.

To the discussion on earnings that are neither high enough nor low enough to show whether or not a person has engaged in substantial gainful activity, we have added (to paragraphs (b)(3)(ii) of §§ 404.1574 and 416.974) references to pay scales in a person's community. We did this to reflect what has been our long-standing policy in this area.

*Evaluation Guides if You Are Self-Employed*

*Comment:* Several writers pointed out the incorrect reference to "paragraph (b)(1) of this section" in §§ 404.1575 and 416.975.

*Response:* We have corrected the cross-references to show the correct sections—§§ 404.1574(b)(1) and 416.974(b)(1).

*Comment:* A person representing a State department of health and social services asked whether the rule in §§ 404.1575(c) and 416.975(c) provides for the deduction of soil bank payments and the value of unpaid help from gross business revenue or from net business income.

*Response:* Our procedures provide that the reasonable value of any significant amount of unpaid help furnished by a spouse, children, or others is to be deducted from gross income. They also provide that soil bank payments are not to be included in figuring net farm income. Our policy is that only income or earnings resulting from a person's own work activity is to be considered when determining whether a person's work is substantial gainful activity. Portions of income resulting from other factors such as unpaid help, rents, and soil bank payments do not result from a person's work and are not counted in determining the amount of substantial gainful activity. We have, however, made several changes to §§ 404.1575(c) and 416.975(c) to more clearly reflect our policies in these areas.

*Additional Changes:* We changed the second sentence in §§ 404.1575(a) and 416.975(a) from "We realize that we cannot use income alone . . ." to "We will not consider income alone . . ." We think the revised version more clearly reflects our policy in evaluating the earnings of a self-employed person. In §§ 404.1575 (a) and (b) and 416.975 (a) and (b) we have changed "give" and "giving" to "render" and "rendering" wherever those words were used to make the language in these sections conform to language that is in our operating manuals. To §§ 404.1575(a) and 416.975(a) we added a discussion, inadvertently left out of the NPRM, to show that earnings from work that a person is forced to stop after a short period of time because of his or her impairment will not be used to show that a person is able to do substantial gainful activity. We pointed out more clearly that paragraph (b)(1) applies to any business other than that of farm landlord. In order to be more specific we changed the references in paragraphs (c)(1) and (c)(2) of these sections from "§ 404.1574" to "§ 404.1574(b)(1)" and from "§ 416.974" to "§ 416.974(b)(1)".

*Widows, Widowers, and Surviving Divorced Wives.—How We Determine Disability for Widows, Widowers, and Surviving Divorced Wives*

*Additional Changes:* We have revised § 404.1578 to make it clear that we

cannot pay benefits to a disabled widow(er) or surviving divorced wife if he or she is actually doing substantial gainful activity regardless of the severity of the impairment.

*Why and When We Will Stop Your Cash Benefits*

*Additional Changes:* We changed the title of this section—§ 404.1579—from "Why and when we will stop your cash benefits" to "Why and when we will find that your disability has ended" to better describe the subject matter of this section. We added new paragraphs (b), (c), and (d) to § 404.1579 to provide that a widow, widower, or surviving divorced wife's disability may also be ended for failure to cooperate, if we are unable to locate him or her and there is a question as to whether he or she is still disabled and to provide the widow(er) a chance to tell us why we should not stop his or her benefits. These provisions, also provided in the regulations relating to disabled workers and persons disabled since childhood, were mistakenly left out of this section when we restructured the regulations.

**Blindness**

*A Period of Disability Based on Blindness*

*Additional Changes:* On the basis of a comment which we received on § 404.1565, we have changed "earnings requirement" to "insured status requirement."

*Evaluation of Work Activity of Blind People*

*Comment:* A writer from a State department of social services feels that the higher SGA earnings test for the blind (over that for the nonblind disabled) adversely affects the number of blind people who are vocationally rehabilitated. The writer points out that the Federal funding formula allocates a portion of the vocational rehabilitation funds on the basis of the number of cases that are closed because the beneficiary was able to return to substantial gainful activity. The comment argues that the higher SGA levels result in fewer case closures and, therefore, reduced funding for State agencies serving the blind.

*Response:* The higher SGA level for the blind was established by the Social Security Amendments of 1977. Our regulations merely reflect the law.

*Additional Changes:* We have rounded to the next whole dollar the amounts a blind person may earn monthly before being considered able to engage in substantial gainful activity. This aligns the amounts shown in this regulation section (§ 404.1584(d)) to the regulations relating to earnings of persons age 65 or over, which provides for rounding to whole dollars, except where to do so would result in a different grace year.

*Why and When We Will Stop Your Cash Benefits*

Additional changes: We added new paragraphs (c), (d), and (e) to § 404.1586 to provide that we may also find a blind person no longer disabled if he or she fails to cooperate with us, or if we are unable to locate him or her and there is a question as to whether he or she is still disabled and to provide the beneficiary a chance to tell us why we should not stop his or her benefits. These provisions, also included in the regulations relating to disabled workers and persons disabled since childhood, were mistakenly left out of this section when we rewrote the regulations. To the rules on blindness in Part 416 we added § 416.986 to give the conditions under which we will no longer consider a person disabled by blindness.

*Circumstances Under Which We May Suspend Your Benefits Before We Make a Determination*

*Comment:* A legal aid bureau wrote that, since this regulation section (§ 404.1587) has no counterpart in the present regulations, it should be deleted.

*Response:* Although not previously contained in the regulations the policy described in this section is not new. Since inclusion of our operating policy into the regulations makes it easier for the public to understand how we administer the program, we believe adding this policy to the regulations is consistent with the goals of Operation Common Sense.

*Additional changes:* We changed the reference (in § 404.1587) to "leaves no doubt" in the first sentence to "clearly shows." We believe the phrase "leaves no doubt" sets up a different level of evidentiary proof than is intended and that the phrase "clearly shows" more accurately describes the intent of this section.

**Continuing or Stopping Disability or Blindness**

*When We Will Investigate Whether Your Disability Continues*

*Comment:* A writer from a legal services agency feels that §§ 404.1590 and 416.990 could be improved by including in these sections information on how often cases are reviewed and how the review, or diary, dates are determined.

*Response:* Medical reexamination diary dates are set up on those cases where the person's impairment falls within one or more of the categories that are listed in our disability operating manuals. These categories list those impairments that can be reasonably expected to improve. We are now conducting various studies to determine whether this list of categories should be revised. We expect to make some changes. If we publish the categories at this time any changes that we later make as a result of those studies would also have to be made in the regulations. We have, therefore, not adopted this suggestion at this time.

*Additional Changes:* We added language explaining that we may start an investigation to determine whether a person's disability is continuing if someone in a position to know tells us that the claimant is not disabled or has returned to work.

*If Your Medical Recovery Was Expected and You Returned To Work*

*Comment:* A person representing a legal services organization wrote that he feels that these sections, 404.1591 and 416.991, should be rewritten to provide for a trial work period even though the person returned to work with no significant medical limitations. The writer points out that persons returning to work occasionally encounter unforeseen difficulties and that medical prognoses can be wrong.

*Response:* The cases with which these sections deal are clear-cut cases where medical improvement was reasonably expected, and the person's condition did improve and he or she returned to full-time work with no medical restrictions. Generally such persons no longer consider themselves disabled. Only persons who are disabled are entitled to a trial work period in which to test their ability to work on a sustained basis. Since these sections deal only with persons who have recovered from their disabilities, we have not adopted this suggestion.

*The Trial Work Period*

*Additional Changes:* We received no comments on these sections (§§ 404.1592 and 416.992). However, we have made several changes. We changed § 416.992, as a result of a comment on the substantial gainful activity regulations. We now explain that earnings during a trial work period, although not evaluated during the trial work period for the purpose of determining whether disability is continuing, are evaluated under the income and resources provisions of our regulations. Earnings during a trial work period can thus

affect a person's monthly benefit amount. We also made a change (in §§ 404.1592(b) and 416.992(b)) to provide the amount of earnings considered to be "services" for earnings in any calendar year before 1979. In doing so we made the dates and amounts conform to the instructions already in our operating manuals. We also made several changes to more clearly show what we do not consider to be services.

*We May Ask You To Help Us Determine Whether You Are Still Disabled*

*Comment:* A person from a legal services agency feels the §§ 404.1593 and 416.993 could be improved by referring to the appropriate paragraphs in §§ 404.1594 and 416.994 regarding cessation of a person's disability benefits if he or she fails to cooperate with us.

*Response:* We have adopted this suggestion.

*Why and When We Will Stop Your Cash Benefits*

*Comment:* A writer from a State department of social services thinks that these sections (§§ 404.1594 (b) and (c) and 416.994 (b) and (c)) do not clearly explain when disability ends in cases where the beneficiary returned to work, and recommends that these sections be revised to clearly differentiate between cessations based on work activity and cessations for medical reasons.

*Response:* We agree with the writer's recommendations and have made changes to more clearly distinguish between the medical and the work activity cessations. We may find that a person's disability has ended for medical reasons because the evidence of record reasonably supports a finding that the person is able to do substantial gainful activity even though he or she may not be working. We may also find that a person's disability has ended for work activity because the person's work activity shows that he or she is able to do substantial gainful activity. Persons who have not medically recovered are entitle to a 9-month trial work period in which to test their abilities to work. Although a determination is not made until after the trial work period, we may determine that the work a person did during the trial work period shows the ability to do substantial gainful activity, and therefore we may determine that a person's disability ended with the month following the trial work period. In other cases, although not showing ability to do substantial gainful activity during the trial work period, a person may demonstrate this ability sometime after the trial work period. We believe that the changes we have made to §§ 404.1594 and 416.994 more clearly state this policy.

*Comment:* Three commenters wrote that we should show that a person's medical condition has improved since disability or blindness was initially established before determining that the disability or blindness has ended. A legal services agency expressed the feeling that several recent Federal court decisions have held that we must show improvement before stopping payment of a person's benefits and that these regulations ignore those decisions. A member of another legal aid foundation feels that once a decision that a person is disabled has been made, the decision should be allowed to stand unless it is clear that his or her condition has improved. Still another legal aid society feels that to find that disability has ended without showing medical improvement, if the person has not returned to work, is patently unfair.

*Response:* Our previous regulations dealing with cessation of disablity (in cases other than widow's and widower's claims) provided that disability should be found to have ended when the impairment is no longer of such severity as to prevent the individual from engaging in any substantial gainful activity (SGA). Those regulations have been interpreted by some to mean that not only must the current evidence show that the individual is unable to engage in SGA but that the evidence must also demonstrate that the impairment forming the basis for the previous allowance (or continuance) has improved. This interpretation can result in the payment of benefits to persons who can engage in substantial gainful activity and who are no longer disabled or blind within the meaning of the law, but for whom actual "improvement" cannot be shown. These recodified regulations make it clear that disability ends when current evidence shows that the individual is able to engage in SGA regardless of whether actual improvement can be demonstrated. We do not agree that this position ignores the position taken by any Federal court. The decision that a person's disability or blindness has ended will not be based on a reexamination of old evidence but will be based on new evidence which will have to reasonably show that the person is able to perform substantial gainful activity. We do not agree that a finding that a person is disabled or blind should be allowed to stand in the face of evidence to the contrary simply because of the lack of evidence clearly showing medical improvement. We do not feel these regulations are unfair and we believe that the requirements of these new regulations provide adequate safeguards for persons who are still disabled or blind.

*Additional Changes:* We changed the titles of these sections from "Why and When We Will Stop Your Cash Benefits" to "Why and When We Will Find that Your Disability Has Ended" so that the title more closely describes the subject matter of the sections. In § 416.994 we corrected the incorrect reference from Subpart N to Subparts M and N.

*When We Determine That You Are Not Now Disabled*

*Comment:* Someone from a legal services agency suggested that § 404.1595 be amended to provide that first priority will be given to the opinion and evidence submitted by a person's treating physician.

*Response:* We do contact a person's current treating sources first. We secure a consultative examination only when we need it. The nature of a report determines the importance we give to it in the adjudicative process. We would not attach the same weight to a report that contains minimal information or an unsupported statement that a person is disabled as we would to a report that gives detailed and extensive findings upon which a determination of disability can be based. We do not believe, therefore, that we should include a categorical statement in the regulations that a treating physician's report will be given first priority.

*Comment:* A writer from a legal services foundation asked whether the reasons given to a beneficiary whose benefits are to be terminated are the same as those shown on the Disability Determination Transmittal. The writer expressed the belief that beneficiaries are entitled to detailed analyses of the reasons for the termination of their benefits.

*Response:* The advance notice that goes to a beneficiary before benefit payments are stopped gives the beneficiary 10 working days to submit additional evidence if he or she disagrees with our decision to terminate benefits. This notice gives a detailed explanation of the evidence in the claims file and tells why we are going to terminate benefits. If the beneficiary submits no new evidence, or if after we review any additional evidence our decision remains unchanged, we prepare a formal termination notice and sent it to the beneficiary. This notice cites the basis in law for our action and tells the beneficiary how to file an appeal should he or she wish to do so. It does not repeat the information already given to

the beneficiary in the advance notice. The Disability Determination Transmittal (our form SSA–833–U5) is used to document decisions to continue or stop disability benefit payments. It documents the legal basis for the decision and serves as a source document from which statistics on the disability insurance program are extracted. The rationale for stopping a person's benefits is shown on a continuation form (SSA–834–U5) and is usually quite similar to the rationale included in the advance notice. We do not believe the beneficiary would be helped by being given a copy of the Disability Determination Transmittal since it contains no information of any value to the beneficiary that has not already been given in the advance notice or the termination notice. We have, therefore, not adopted this suggestion.

*Comment:* This same writer also feels a copy of the Disability Determination Transmittal should be given to persons who are denied benefits at the initial or reconsideration level.

*Response:* As with continuing eligibility claims, the Disability Determination Transmittal documents the decision and the legal basis for that decision, and serves as a source document for statistics. Much of the information is technical or statistical in nature and would be of little help to the claimant in understanding why his or her claim has been denied. Although the Disability Determination Transmittal does show the reasons for the denial, these same reasons are also included in the notice to the person of the disallowance of his or her claim. We have always encouraged people to contact our local offices if they have any questions regarding their claims. We believe that this person-to-person contact is more helpful than a detailed letter. We also believe that furnishing a copy of the Disability Determination Transmittal to denied claimants would not really help their understanding of why they have been denied. We have, therefore, not adopted this suggestion.

*Comment:* A legal aid bureau commented that, since the procedures described here and in §§ 404.1596 and 404.1597 were not previously found in the regulations, Operation Common Sense is not the forum for making these changes.

*Response:* The procedures described in these sections, although not described in the present regulations, reflect the practices we use in administering the title II disability program. These sections do not contain any new policies or procedures. Since inclusion of these policies and procedures into the regulations makes it easier for the public to understand how we administer the program, we believe their addition to the regulations is consistent with the goals of Operation Common Sense.

*Circumstances Under Which We May Suspend Your Benefits Before We Make a Determination*

*Comment:* Someone from a legal services foundation wrote that § 404.1596(b)(2) should make more clear what we mean by ". . . we are satisfied that you received our request and our records show that you should be able to respond." The same writer asked if illiteracy is an acceptable reason for failure to respond to a written notice.

*Response:* We may request additional medical or other evidence by mail, telephone, personal contact, or by a combination of these ways. Our policies provide that before we suspend a person's benefits it must be reasonable to infer from information in the file that he or she has received our request. Our file must also show that the beneficiary apparently understands, or is capable of understanding, the request. In addition, the file must show that all reasonable attempts have been made to secure the beneficiary's cooperation. We believe the wording of this section adequately protects the beneficiary, and we have made no changes.

Illiteracy, in itself, is not necessarily an acceptable reason for failure to respond to a written notice. Generally the case folder will indicate whether or not the beneficiary is illiterate. Whether or not the beneficiary has been able to understand previous letters, such as the award notice, is generally reflected in the folder. In addition, there is usually a follow-up contact in person or by telephone.

*Additional Changes:* We have changed the reference to "leaves no doubt" in the first sentence of § 404.1596(b)(1) to "clearly shows." We believe the phrase "leaves no doubt" sets up a different level of evidentiary proof than we intended and that the phrase "clearly shows" more accurately describes the intent of this section.

*If You Become Disabled by Another Impairment*

*Comment:* A legal aid bureau commented that, since these proposed sections (§§ 404.1598 and 416.998) were not in the previous regulations, they should not be included in this recodification.

*Response:* Although not previously contained in the regulations, the policy described in these sections—which concern persons already receiving benefits who become disabled by subsequent impairments—is not new policy. We believe inclusion of this policy in the regulations is consistent with our efforts to increase public understanding of our administration of the program.

*Other Comment*

*Comment:* A writer from a State rehabilitation commission recommended adding a section that would permit a person to continue to receive SSA benefits while participating in a rehabilitation program whether or not he or she has medically recovered. The writer mentions that medical recovery results in termination of a person's benefits and may result in termination of his or her rehabilitation program as well.

*Response:* Present law does not permit the payment of benefits after medical recovery. Although a person's benefits have to be terminated upon medical recovery, his or her rehabilitation program may not necessarily end. A State vocational rehabilitation agency may continue the program using section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730), funds instead of Social Security Trust Fund monies.

The amendments are hereby adopted as revised and set forth below.

(Catalog and Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

Dated: June 4, 1980.

William J. Driver,

*Commissioner of Social Security.*

Approved: August 7, 1980.

Patricia Roberts Harris,

*Secretary of Health and Human Services.*

## PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950– )

1. Subpart P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

### Subpart P—Determining Disability and Blindness

General

Sec.

404.1501 Scope of subpart.
404.1502 General definitions and terms for this subpart.

Determinations

404.1503 Who makes disability and blindness determinations.
404.1504 Determinations by other organizations and agencies.

Definition of Disability

404.1505 Basic definition of disability.

404.1508 What is needed to show an impairment.
404.1509 How long the impairment must last.
404.1510 Meaning of substantial gainful activity.

Evidence

404.1512 Your responsibility to submit evidence.
404.1513 Medical evidence of your impairment.
404.1514 When we will purchase existing evidence.
404.1515 Where and how to submit evidence.
404.1516 If you fail to submit medical and other evidence.
404.1517 Consultative examination at our expense.
404.1518 If you do not appear at a consultative examination.

Evaluation of Disability

404.1520 Evaluation of disability in general.
404.1521 What we mean by an impairment that is not severe.
404.1522 When you have two or more unrelated impairments—initial claims.

Medical Considerations

404.1525 Listing of impairments in Appendix 1.
404.1526 Medical equivalence.
404.1527 Conclusion by physicians concerning your disability.
404.1528 Symptoms, signs and laboratory findings.
404.1529 How we evaluate symptoms including pain.
404.1530 Need to follow prescribed treatment.

Residual Functional Capacity

404.1545 Your residual functional capacity.
404.1546 Responsibility for assessing and determining residual functional capacity.

Vocational Considerations

404.1560 When your vocational background will be considered.
404.1561 Your ability to do work depends upon your residual functional capacity.
404.1562 If you have done only arduous unskilled physical labor.
404.1563 Your age as a vocational factor.
404.1564 Your education as a vocational factor.
404.1565 Your work experience as a vocational factor.
404.1566 Work which exists in the national economy.
404.1567 Physical exertion requirements.
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Substantial Gainful Activity

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404.1572 What we mean by substantial gainful activity.
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404.1574 Evaluation guides if you are an employee.
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Widows, Widowers, and Surviving Divorced Wives

404.1577 Disability defined for widows, widowers and surviving divorced wives.
404.1578 How we determine disability for widows, widowers and surviving divorced wives.
404.1579 Why and when we will find that your disability has ended.
404.1580 You are not eligible for a trial work period.

Blindness

404.1581 Meaning of blindness as defined in the law.
404.1582 A period of disability based on blindness.
404.1583 How we determine disability for blind persons who are age 55 or older.
404.1584 Evaluation of work activity of blind people.
404.1585 Trial work period for persons age 55 or older who are blind.
404.1586 Why and when we will stop your cash benefits.
404.1587 Circumstances under which we may suspend your benefits before we make a determination.

Continuing or Stopping Disability

404.1588 Your responsibility to tell us of events that may change your disability status.
404.1589 We may investigate to find out whether you continue to be disabled.
404.1590 When we will investigate whether your disability continues.
404.1591 If your medical recovery was expected and you returned to work.
404.1592 The trial work period.
404.1593 We may ask you to help us determine if you are still disabled.
404.1594 Why and when we will find that your disability has ended.
404.1595 When we determine that you are not now disabled.
404.1596 Circumstances under which we may suspend your benefits before we make a determination.
404.1597 After we make a determination that you are not now disabled.
404.1598 If you become disabled by another impairment.

Appendix 1—Listing of Impairments

Appendix 2—Medical-Vocational Guidelines

Authority: Issued under Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, as amended, 68 Stat. 1081, as amended, 68 Stat. 1082, as amended, 70 Stat. 815, as amended, 70 Stat. 817, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302.

## Subpart P—Determining Disability and Blindness

### General

#### § 404.1501 Scope of subpart.

In order for you to become entitled to any benefits based upon disability or blindness or to have a period of disability established, you must be disabled or blind as defined in title II of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We discuss a "period of disability" in subpart D of this Part. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability determinations and state that disability determinations made under other programs are not binding on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 404.1505–404.1510.

(c) Sections 404.1512–404.1518 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what information should be included in medical reports.

(d) Our general rules on evaluating disability are stated in §§ 404.1520–404.1523. We describe the steps that we go through and the order in which they are considered.

(e) Our rules on medical considerations are found in §§ 404.1525–404.1530. We explain in these rules—

(1) The purpose of the Listing of Impairments found in Appendix 1 of this subpart and how to use it;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 404.1545–404.1546 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(g) Our rules on vocational considerations are found in §§ 404.1560–404.1569. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required

for work, and describe and tell how to use the Medical-Vocational Guidelines in Appendix 2 of this subpart.

(h) Our rules on substantial gainful activity are found in §§ 404.1571–404.1574. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(i) In §§404.1577–404.1580 we explain the special rules covering disability for widows, widowers, and surviving divorced wives, and in §§ 404.1581–404.1587 we discuss disability due to blindness.

(j) Our rules on when disability continues and stops are contained in §§ 404.1588–404.1598. We explain what your responsibilities are in telling us of any events that may cause a change in your disability status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

**§ 404.1502 General definitions and terms for this subpart.**

As used in this subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

**Determinations**

**§ 404.1503 Who makes disability and blindness determinations.**

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State; and

(3) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination we may find that—

(1) You are not disabled or blind, although the State agency found you disabled or blind;

(2) Your disability or blindness began later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier than the date found by the State agency.

**§ 404.1504 Determinations by other organizations and agencies.**

A decision by any nongovernmental agency or any other governmental agency about whether you are disabled or blind is based on its rules and is not our decision about whether you are disabled or blind. We must make a disability or blindness determination based on social security law. Therefore, a determination made by another agency that you are disabled or blind is not binding on us.

**Definition of Disability**

**§ 404.1505 Basic definition of disability.**

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience. We will use this definition of disability if you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 404.1581 through 404.1587. There are also different rules for determining disability for widows, widowers, and surviving divorced wives. We discuss these in §§ 404.1577 through 404.1580.

**§ 404.1508 What is needed to show an impairment.**

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms. (See § 404.1528 for further information about what we mean by symptoms, signs, and laboratory findings.)

**§ 404.1509 How long the impairment must last.**

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

**§ 404.1510 Meaning of substantial gainful activity.**

Substantial gainful activity means work that—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for pay or profit.

(See § 404.1572 for further details about what we mean by substantial gainful activity.)

**Evidence**

**§ 404.1512 Your responsibility to submit evidence.**

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which we receive evidence. We will help you in getting medical reports when you give us permission to request them from your doctors and other medical sources. If we ask, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 404.1560 through 404.1569 we discuss in more detail the evidence we need when we consider vocational factors.)

**§ 404.1513 Medical evidence of your impairment.**

(a) *Acceptable sources.* We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (we may need a report from a physician to determine other aspects of eye diseases); and

(5) Persons authorized to send us a copy or summary of the medical records of a hospital, clinic, sanitorium, medical institution, or health care facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency. However, we will not return an uncertified copy or summary for certification unless there is some question about the document.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced wives).

(c) *Medical assessment.* The medical assessment should describe—

(1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources; and

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.).

**§ 404.1514 When we will purchase existing evidence.**

You are responsible for submitting evidence to support your disability claim. This requires you to secure the medical evidence we will need to make a disability or blindness determination from the medical sources where you were examined or treated. Although we will help you get this information by asking these sources on your behalf, we will not usually pay for this information. However, there are rare situations when we will pay for existing evidence. For example, if the evidence in file shows that you may be disabled, but it does not contain the medical findings needed to make a disability determination, and we must have this additional information. If we find that one (or more) of your medical sources has this information, but that they will not give us the information until they are paid for it, we may pay for the report. Generally, we may pay when a hospital or clinic charges a small fee to cover its copying and mailing costs, and the only other way we can get the information would be to have you take a special examination at our expense.

**§ 404.1515 Where and how to submit evidence.**

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart H of this Part.

**§ 404.1516 If you fail to submit medical and other evidence.**

If you do not give us the medical and other evidence that we need and request, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

**§ 404.1517 Consultative examination at our expense.**

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

(1) To obtain more detailed medical findings about your impairment(s);

(2) To obtain technical or specialized medical information; or

(3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

**§ 404.1518 If you do not appear at a consultative examination.**

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;

(4) Having had death or serious illness occur in your immediate family.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

## Evaluation of Disability

### § 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1, or we determine that the impairment is equal to one of the listed impairments, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 404.1562.)

### § 404.1521 What we mean by an impairment that is not severe.

(a) *Non-severe impairment.* An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

### § 404.1522 When you have two or more unrelated impairments—initial claims.

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

## Medical Considerations

### § 404.1525 Listing of impairments in Appendix 1.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically

acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnosis of impairments.* We will not consider your impairment to be one listed in Appendix 1 solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

**§ 404.1526 Medical equivalence.**

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the listed impairment most like your impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations.

**§ 404.1527 Conclusion by physicians concerning your disability.**

We are responsible for determining whether you are disabled. Therefore, a statement by your physician that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled."

**§ 404.1528 Symptoms, signs, and laboratory findings.**

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Pyschiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests.

**§ 404.1529 How we evaluate symptoms, including pain.**

If you have a physical or mental impairment, you may have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that you are disabled based on your symptoms, including pain, unless medical signs or findings show that there is a medical condition that could be reasonably expected to produce those symptoms.

**§404.1530 Need to follow prescribed treatment.**

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work.

(b) *When you do not follow prescribed treatment.* If you do not follow the prescribed treatment without a good reason, we will not find you disabled or, if you are already receiving benefits, we will stop paying you benefits.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Residual Functional Capacity

**§ 404.1545 Your residual functional capacity.**

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs, (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations[,] may also be used. These descriptions and observations, when

used, must be considered along with the rest of your medical record[,] to enable us to decide to what extent your impairment keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment. Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders, we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

**§ 404.1546 Responsibility for assessing and determining residual functional capacity.**

The State agency staff physicians or other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicians, consultative physicians, or any other physician designated by the Secretary. (See § 404.1545.) For cases at the hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the administrative law judge or Appeals Council.

## Vocational Considerations

**§ 404.1560 When your vocational background will be considered.**

(a) *General.* We may consider vocational factors when you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 404.1517).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exists in significant numbers in the nation's economy.

**§ 404.1561 Your ability to do work depends upon your residual functional capacity.**

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country). Sections 404.1563–404.1565 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

**§ 404.1562 If you have done only arduous unskilled physical labor.**

If you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) (except where the work is sporadic or is not medically advisable), we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either on a full-time or a reasonably regular part-time basis.

Example: B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

**§ 404.1563 Your age as a vocational factor.**

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain in detail how we consider your age as a vocational factor in Appendix 2. However, we will not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50–54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a

significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 404.1567(c)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60–64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits or if the amount of your benefit will be affected, we will ask you for evidence of your age.

**§ 404.1564 Your education as a vocational factor.**

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your educational abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

**§ 404.1565 Your work experience as a vocational factor.**

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we

will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

**§ 404.1566 Work which exists in the national economy.**

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which you live;

(2) A specific job vacancy exists for you; or

(3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

(1) Your inability to get work;

(2) Lack of work in your local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which you have worked;

(5) Cyclical economic conditions;

(6) No job openings for you;

(7) You would not actually be hired to do work you could otherwise do; or

(8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

(1) *Dictionary of Occupational Titles,* published by the Department of Labor;

(2) *County Business Patterns,* published by the Bureau of the Census;

(3) *Census Reports,* also published by the Bureau of the Census;

(4) *Occupational Analyses,* prepared for the Social Security Administration by various State employment agencies; and

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

**§ 404.1567 Physical exertion requirements.**

To determine the physical exertion requirements of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles,* published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light and sedentary work.

**§ 404.1568 Skill requirements.**

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

**§ 404.1569 Listing of Medical-Vocational Guidelines in Appendix 2.**

The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

## Substantial Gainful Activity

**§ 404.1571 General.**

The work that you have done during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled. (We explain the rules for persons who are statutorily blind in § 404.1584.) Even if the work you have done was not substantial gainful activity, it may show that you are able to do more work than you actually did. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

**§ 404.1572 What we mean by substantial gainful activity.**

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

**§ 404.1573 General information about work activity.**

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

**§ 404.1574 Evaluation guides if you are an employee.**

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity.

Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b)(1), (2), and (3) of this section.

(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than $200 a month in calendar years prior to 1976, $230 a month in calendar year 1976, $240 a month in calendar year 1977, $260 a month in calendar year 1978, $280 a month in calendar year 1979, $300 a month in calendar years after 1979.

However, if there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b) (1) and (2) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section, according to pay scales in your community.

**§ 404.1575 Evaluation guides if you are self-employed.**

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(1) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we

will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 404.1574(b)(1); or

(2) Your net income from the business averages less than the amounts described in § 404.1574(b)(1) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

## Widows, Widowers, and Surviving Divorced Wives

### § 404.1577 Disability defined for widows, widowers, and surviving divorced wives.

If you are a widow, widower, or surviving divorced wife, the law provides that you must have a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The impairments must be of a level of severity to prevent a person from doing any gainful activity. To determine whether you are disabled, we consider only your physical or mental impairment. We do not consider your age, education and work experience.

### § 404.1578 How we determine disability for widows, widowers, and surviving divorced wives.

(a) We will find that you are disabled and pay you benefits as a widow, widower, or surviving divorced wife if—

(1) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in Appendix 1 or are medically equivalent to those for any impairment shown there;

(2) Your impairment(s) meets the duration requirement.

(b) However, even, if you meet the requirements in (a) (1) and (2) of this section, we will not find you disabled if you are doing substantial gainful activity.

### § 404.1579 Why and when we will find that your disability has ended.

(a) *If you are not disabled.* If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced wife, we will find that your disability ended in the earlier of—

(1) The month your impairment, as shown by current medical evidence, is not an impairment listed in Appendix 1 or is not equal to a listed impairment; or

(2) The month you do substantial gainful activity.

(b) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(c) *If we are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(d) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

### § 404.1580 You are not eligible for a trial work period.

When you are receiving benefits because you are a disabled widow, widower, or surviving divorced wife, you are not entitled to a trial work period.

## Blindness

### § 404.1581 Meaning of blindness as defined in the law.

We will consider you blind under the law for a period of disability and for payment of disability insurance benefits if we determine that you are statutorily blind. Statutory blindness is defined in the law as central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less. Your blindness must meet the duration requirement in § 404.1509.

### § 404.1582 A period of disability based on blindness.

If we find that you are blind and you meet the insured status requirement, we may establish a period of disability for you regardless of whether you can do substantial gainful activity. A period of disability protects your earnings record under Social Security so that the time you are disabled will not count against you in determining whether you will have worked long enough to qualify for benefits and the amount of your benefits. However, you will not necessarily be entitled to receive disability insurance cash benefits even though you are blind. If you are a blind person under age 55, you must be unable to do any substantial gainful activity in order to be paid disability insurance cash benefits.

### § 404.1583 How we determine disability for blind persons who are age 55 or older.

We will find that you are eligible for disability insurance benefits even though you are still engaging in substantial gainful activity, if—

(a) You are blind;

(b) You are age 55 or older; and

(c) You are unable to use the skills or abilities like the ones you used in any substantial gainful activity which you did regularly and for a substantial period of time. (However, you will not be paid any cash benefits for any month in which you are doing substantial gainful activity.)

### § 404.1584 Evaluation of work activity of blind people.

(a) *General.* If you are blind (as explained in § 404.1581), we will consider the earnings from the work you are doing to determine whether or not you should be paid cash benefits.

(b) *Under Age 55.* If you are under age 55, we will evaluate the work you are doing using the guides in paragraph (d) of this section to determine whether or

not your work shows that you are doing substantial gainful activity. If you are not doing substantial gainful activity, we will pay you cash benefits. If you are doing substantial gainful activity, we will not pay you cash benefits. However, you will be given a period of disability as described in Subpart D of this Part.

(c) *Age 55 or older.* If you are age 55 or older, we will evaluate your work using the guides in paragraph (d) of this section to determine whether or not your work shows that you are doing substantial gainful activity. If you have not shown this ability, we will pay you cash benefits. If you have shown an ability to do substantial gainful activity, we will evaluate your work activity to find out how your work compares with the work you did before. If the skills and abilities of your new work are about the same as those you used in the work you did before, we will not pay you cash benefits. However, if your new work requires skills and abilities which are less than or different than those you used in the work you did before, we will pay you cash benefits, but not for any month in which you actually perform substantial gainful activity.

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334.00 in 1978; $375.00 in 1979; $417.00 in 1980; $459.00 in 1981; and $500.00 in 1982. Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed in taxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

**§ 404.1585 Trial work period for persons age 55 or older who are blind.**

If you become eligible for disability benefits even though you were doing substantial gainful activity because you are blind and age 55 or older, you are entitled to a trial work period if—

(a) You later return to substantial gainful activity that requires skills or abilities comparable to those required in the work you regularly did before you become blind or became 55 years old, whichever is later; or

(b) Your last previous work ended because of an impairment and the current work requires a significant vocational adjustment.

**§ 404.1586 Why and when we will stop your cash benefits.**

(a) *When you are not entitled to benefits.* If you become entitled to disability cash benefits as a statutorily blind person, we will find that you are no longer entitled to benefits beginning with the earliest of—

(1) The month your vision, as shown by current medical evidence, does not meet the definition of blindness (and any remaining impairments do not make you unable to do substantial gainful activity considering your age, education and work experience);

(2) If you are under age 55, the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(3) If you are age 55 or older, the month (following completion of a trial work period) when your work activity shows you are able to use, in substantial gainful activity, skills and abilities comparable to those of some gainful activity which you did with some regularity and over a substantial period of time. The skills and abilities are compared to the activity you did prior to age 55 or blindness, whichever is earlier.

(b) *If we find that you are not entitled to disability cash benefits.* If we find that you are not entitled to disability cash benefits on the basis of your work activity but your visual impairment is sufficiently severe to meet the definition of blindness, the period of disability that we established for you will continue.

(c) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a medical examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what is asked. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(d) *If we are unable to find you.* If there is a question about whether you continue to be disabled by blindness and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(e) *Before we stop your benefits.* Before we stop your benefits or period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

**§ 404.1587 Circumstances under which we may suspend your benefits before we make a determination.**

We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

**Continuing or Stopping Disability**

**§ 404.1588 Your responsibility to tell us of events that may change your disability status.**

If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

(a) Your condition improves;

(b) You return to work;

(c) You increase the amount of your work; or

(d) Your earnings increase.

**§ 404.1589 We may investigate to find out whether you continue to be disabled.**

After we find that you are disabled, we must determine from time to time if you are still eligible for disability cash benefits. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend payment of your benefits, we will notify you in writing and give you an opportunity to reply. In § 404.1590 we describe those events that may prompt us to investigate whether you continue to be disabled.

**§ 404.1590 When we will investigate whether your disability continues.**

(a) *General.* We investigate to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled or if there is not enough evidence to support a finding that disability continues.

(b) *When we will investigate.* An investigation will be started if—

(1) We need a current medical report to see if you are able to do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or that you have returned to work; or

(5) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training;

(ii) You have returned to work;

(iii) You are able to return to work; or

(6) Some one in a position to know of your physical or mental condition tells us that you are not disabled or that you have returned to work and it appears that the report could be susbtantially correct.

**§ 404.1591 If your medical recovery was expected and you returned to work.**

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 404.1592).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

**§ 404.1592 The trial work period.**

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still be considered disabled. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, after the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1978 you earn more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1978, your net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or you work more than 15 hours a month in the business. We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash benefits.

(d) *Who is and is not entitled to a trial work period.* (1) Those who are receving disability insurance benefits or child's insurance benefits based on disability generally are entitled to a trial work period.

(2) You are not entitled to a trial work period if—(i) You are receiving benefits because you are a disabled widow, widower, or surviving divorced wife;

(ii) You are entitled to a period of disability but not to disability insurance cash benefits; or

(iii) You are receiving benefits in a second period of disability for which you did not have to complete a waiting period.

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance cash benefits or to child's cash benefits based on disability. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

**§ 404.1593 We may ask you to help us determine if you are still disabled.**

If you are entitled to cash benefits or if a period of disability has been established for you because you are disabled, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a disability determination. You must have a good reason for not giving us this information (see § 404.1594(c)).

**§ 404.1594 Why and when we will find that your disability has ended.**

(a) *General.* When the medical or other evidence in your file shows that your disability has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for cash benefits and for a period of disability will end. Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow. We may also stop payment of your benefits if you have not cooperated with us in getting information about your disability or if we cannot find you (see paragraph (c) of this section).

(b) *Disabled workers and persons disabled since childhood.* If you are entitled to disability cash benefits as a disabled worker or to child's insurance benefits, we will find that your disability ended in the earliest of the following months—(1) The month in which your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity;

(2) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(3) The month in which you actually do substantial gainful activity (where you are not entitled to a trial work period).

(c) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good reason) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(d) *If we are unable to find you.* If there is a question about whether you

continue to be disabled and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

(e) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow.

**§ 404.1595 When we determine that you are not now disabled.**

(a) *When we will give you advance notice.* Except in those circumstances described in paragraph (d) of this section, we will give you advance notice when we have determined that you are not now disabled because the information we have conflicts with what you have told us about your disability. If your dependents are receiving benefits on your Social Security number and do not live with you, we will also give them advance notice. To give you advance notice, we will contact you by mail, telephone or in person.

(b) *What the advance notice will tell you.* We will give you a summary of the information we have. We will also tell you why we have determined that you are not now disabled, and will give you a chance to reply. If it is because of—

(1) *Medical reasons.* The advance notice will tell you what the medical information in your file shows;

(2) *Your work activity.* The advance notice will tell you what information we have about the work you are doing or have done, and why this work shows that you are not disabled; or

(3) *Your failure to give us information we need or do what we ask.* The advance notice will tell you what information we need and why we need it or what you have to do and why.

(c) *What you should do if you receive an advance notice.* If you agree with the advance notice, you do not need to take any action. If you desire further information or disagree with what we have told you, you should immediately write or telephone the State agency or the social security office that gave you the advance notice or you may visit any social security office. If you believe you are now disabled, you should tell us why. You may give us any additional or new information, including reports from your doctors, hospitals, employers or others, that you believe we should have. You should send these as soon as possible to the local social security office or to the office that gave you the advance notice. We consider 10 days to be enough time for you to tell us, although we will allow you more time if you need it. You will have to ask for additional time beyond 10 days if you need it.

(d) *When we will not give you advance notice.* We will not give you advance notice when we determine that you are not disabled if—

(1) We recently told you that the information we have shows that you are not now disabled, that we were gathering more information, and that your benefits will stop; or

(2) We are stopping your benefits because you told us you are not now disabled; or

(3) We recently told you that continuing your benefits would probably cause us to overpay you and you asked us to stop your benefits.

**§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.**

(a) *General.* Under some circumstances, we may stop your benefits before we make a determination. Generally, we do this when the information we have clearly shows you are not now disabled but we cannot determine when your disability ended. These situations are described in paragraph (b)(1) and other reasons are given in paragraph (b)(2) of this section. We refer to this as a suspension of benefits. Your benefits, as well as those of your dependents (regardless of where they receive their benefits), may be suspended. When we do this we will give you advance notice. (See § 404.1595.) We will contact your spouse and children if they are receiving benefits on your Social Security number, and the benefits are being mailed to an address different from your own.

(b) *When we will suspend your benefits.* (1) *You are not now disabled.* We will suspend your benefits if the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when—(i) New medical or other information clearly shows that you are able to do substantial gainful activity and your benefits should have stopped more than 2 months ago;

(ii) You completed a 9-month period of trial work more than 2 months ago and you are still working;

(iii) At the time you filed for benefits your condition was expected to improve and you were expected to be able to return to work. You subsequently did return to work more than 2 months ago with no significant medical restrictions; or

(iv) You are not entitled to a trial work period and you are working.

(2) *Other reasons.* We will also suspend your benefits if—(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond.

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable; or

(iii) You refuse to accept vocational rehabilitation services without a good reason. Section 404.422 gives you examples of good reasons for refusing to accept vocational rehabilitation services.

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—(1) the evidence in your file does not clearly show that you are not disabled;

(2) We have asked you to furnish additional information; or

(3) You have become disabled by another impairment.

**§ 404.1597 After we make a determination that you are not now disabled.**

If we make a determination that you are not now disabled, your benefits will stop. You will receive a formal written notice telling you why you are not disabled and the month your benefits should stop. If your spouse and children are receiving benefits on your Social Security number, we will also stop their benefits and tell them why. The notices will also explain your right to reconsideration if you disagree with our determination.

**§ 404.1598 If you become disabled by another impairment.**

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

**Appendix 1.—Listing of Impairments**

*Part A*

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.


1.00 Musculoskeletal system.
2.00 Special sense and speech.
3.00 Respiratory system.
4.00 Cardiovascular system.
5.00 Digestive system.
6.00 Genito-urinary system.
7.00 Hemic and lymphatic system.
8.00 Skin.

9.00 Endocrine system.
10.00 Multiple body systems.
11.00 Neurological.
12.00 Mental disorders.
13.00 Neoplastic diseases—malignant.

**1.00 Musculoskeletal System**

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine,* associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the requirements for the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the severity of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12), or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); American Medical Association, 1971.

**1.01 Category of Impairments, Musculoskeletal**

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.* With both A and B:

A. Persistent joint pain, swelling, and tenderness involving multiple joints with signs of joint inflammation (heat, swelling, tenderness) despite therapy for at least 3 months, and activity expected to last over 12 months; and

B. Corroboration of diagnosis at some point in time by either:

1. Postive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate.

1.03 *Arthritis of a major weight-bearing joint (due to any cause)* with limitation of motion and enlargement or effusion in the affected joint, as well as a history of joint pain and stiffness. With:

A. Gross anatomical deformity such as subluxation, contracture, bony or fibrous ankylosis, or instability; or

B. Ankylosis of the hip outside of the position of function (i.e., at less than 20° or more than 30° of flexion measured from the neutral position) and X-ray evidence of either joint space narrowing with osteophytosis or bony destruction (with erosions or cysts); or

C. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause)* with limitation of motion and enlargement or effusion in the affected joints as well as a history of joint pain and stiffness and X-ray evidence of either joint space narrowing with osteophytosis or bony destruction (with erosions or cysts). With:

A. Abduction of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity such as subluxation, contracture, bony or fibrous ankylosis, joint instability, or ulnar deviation.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.06 *Osteomyelitis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, drainage, leucocytosis, or increased sedimentation rate); or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation; or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity causing mobility restrictions.

1.11 *Fracture of the femur, tibia, tarsal bone, or pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7 foot-candles. Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without a lens), a 6 mm. white disc target will be used. In neither instance should corrective lenses be worn during the examination but if they have been used, this fact must be stated.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscles of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of its value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of severity in a claimant alleging deafness, the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as light-headedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-

otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular function is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained, in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or laryngectomy or cicatricial laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

**2.01 Category of Impairments, Special Senses and Speech**

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater, and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000, and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear.

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard, understood, and sustained.

Table No. 1.—*Percentage of central visual efficiency corresponding to central visual acuity notations for distance in the phakic and aphakic eye (better eye)*

| Snellen | | Percent central visual efficiency | | |
|---|---|---|---|---|
| English | Metric | Phakic [1] | Aphakic monocular [2] | Aphakic binocular [3] |
| 20/16 | 6/5 | 100 | 50 | 75 |
| 20/20 | 6/6 | 100 | 50 | 75 |
| 20/25 | 6/7.5 | 95 | 47 | 71 |
| 20/32 | 6/10 | 90 | 45 | 67 |
| 20/40 | 6/12 | 85 | 42 | 64 |
| 20/50 | 6/15 | 75 | 37 | 56 |
| 20/64 | 6/20 | 65 | 32 | 49 |
| 20/80 | 6/24 | 60 | 30 | 45 |
| 20/100 | 6/30 | 50 | 25 | 37 |
| 20/125 | 6/38 | 40 | 20 | 30 |
| 20/160 | 6/48 | 30 | ——— | 22 |
| 20/200 | 6/60 | 20 | ——— | ——— |

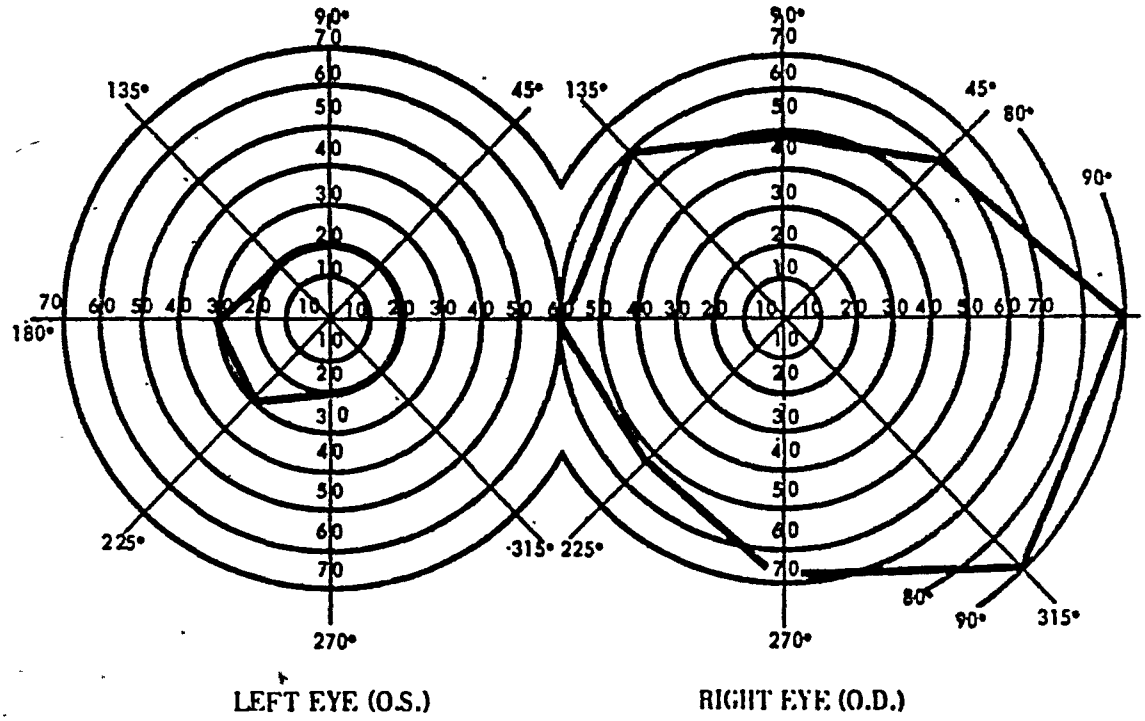
*Column and Use*

[1] Phakic.—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens is absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however, the central visual acuity in the poorer eye after best correction is 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

Table No. 2.—*Chart of visual field showing extent of normal field and method of computing percent of visual field efficiency*



1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field efficiency of this field is: $6\times20+2\times30=180\div500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

**3.00 Respiratory System**

A. *Causes of impairment.* The impairment produced by respiratory disease usually results from chronic recurrent infection or from pulmonary insufficiency or a combination of these factors.

B. *Pulmonary tuberculosis will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active pulmonary tuberculosis such as positive cultures, increasing lesions, or cavitation is not, by itself, a basis for determining that an individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistence of pulmonary infection caused by mycobacteria for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchiectasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in § 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of pulmonary insufficiency.* The results of ventilatory function studies for evaluation under Tables I, II, and IV should be expressed in liters or liters per minute. The reported 1 second forced expiratory volume ($FEV_1$) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from $FEV_1$. These studies should be repeated after administration of a nebulized bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in Tables I, II, and IV assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in Tables I, II, and IV.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The $FEV_1$ must be recorded at a speed of at least 20 mm. per second. Calculation of the $FEV_1$ from a flow volume loop is not acceptable. The recording device must provide a volume excursion of at least 10 mm. per liter. The MVV should be represented by the tidal excursions measured over a 10-to-15 second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The height of the individual must be recorded. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions, and cooperate in performing the test.

**3.01 Category of Impairments, Respiratory**

3.02 *Chronic obstructive airway disease (due to any cause)* with spirometric evidence of airway obstruction demonstrated by MVV and $FEV_1$ both equal to, or less than, the values specified in Table I, corresponding to the person's height.

**Table I**

| Height (inches) | MVV (MBC) equal to or and less than | $FEV_1$ equal to or less than |
|---|---|---|
| | L/Min. | L |
| 57 or less | 32 | 1.0 |
| 58 | 33 | 1.0 |
| 59 | 34 | 1.0 |
| 60 | 35 | 1.1 |
| 61 | 36 | 1.1 |
| 62 | 37 | 1.1 |
| 63 | 38 | 1.1 |
| 64 | 39 | 1.2 |
| 65 | 40 | 1.2 |
| 66 | 41 | 1.2 |
| 67 | 42 | 1.3 |
| 68 | 43 | 1.3 |
| 69 | 44 | 1.3 |
| 70 | 45 | 1.4 |
| 71 | 46 | 1.4 |
| 72 | 47 | 1.4 |
| 73 or more | 48 | 1.4 |

3.03 *Asthma.* With:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive airway disease in 3.02; or

B. Episodes of severe attacks (see 3.00C), in spite of prescribed treatment, occurring at least once every 2 months, or on an average of at least 6 times a year and prolonged expiration with wheezing or rhonchi between attacks.

3.04 *Diffuse pulmonary fibrosis (sarcoidosis, Hamman-Rich syndrome, idiopathic interstitial fibrosis, and similar diffuse fibroses substantiated by chest X-ray or tissue diagnosis. This category does not include cases of bronchitis or emphysema with incidental scarring or scattered parenchymal fibrosis on X-ray).* With:

A. Total vital capacity equal to, or less than, values specified in Table II below corresponding to the person's height.

**Table II**

| Height (inches) | V.C. equal to or less than (L.) |
|---|---|
| 57 or less | 1.2 |
| 58 | 1.3 |
| 59 | 1.3 |
| 60 | 1.4 |
| 61 | 1.4 |
| 62 | 1.5 |
| 63 | 1.5 |
| 64 | 1.6 |
| 65 | 1.6 |
| 66 | 1.7 |
| 67 | 1.7 |
| 68 | 1.8 |
| 69 | 1.8 |
| 70 | 1.9 |
| 71 | 1.9 |
| 72 | 2.0 |
| 73 or more | 2.0 |

or

B. Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than 30 percent of predicted normal. (All methods—actual values and predicted normal values for the method used should be reported); or

C. Arterial oxygen tension ($pO_2$) at rest and simultaneously determined arterial carbon dioxide tension ($pCO_2$) equal to, or less than, the values specified in Table III.

**Table III**

| Arterial $pCO_2$ (mm. Hg) *and* | Arterial ($pO_2$) equal to or less than (mm. Hg) |
|---|---|
| 30 or below | 65 |
| 31 or below | 64 |
| 32 or below | 63 |
| 33 or below | 62 |
| 34 or below | 61 |
| 35 or below | 60 |
| 36 or below | 59 |
| 37 or below | 58 |
| 38 or below | 57 |
| 39 or below | 56 |
| 40 or above | 55 |

3.05 *Other restrictive ventilatory disorders (e.g., kyphoscoliosis, thoracoplasty, pulmonary resection)* with total vital capacity equal to, or less than, values specified in Table IV corresponding to the person's height.

**Table IV**

| Height (inches) | V.C. equal to or less than (L.) |
|---|---|
| 59 or less | 1.0 |
| 60 | 1.1 |
| 61 | 1.1 |
| 62 | 1.1 |
| 63 | 1.1 |
| 64 | 1.2 |
| 65 | 1.2 |
| 66 | 1.2 |
| 67 | 1.3 |
| 68 | 1.3 |

Table IV—Continued

| Height (inches) | V.C. equal to or less than (L.) |
|---|---|
| 69 | 1.3 |
| 70 or more | 1.4 |

3.06 *Pneumoconiosis (demonstrated by X-ray evidence).* With:

A. Nodular or focal fibrosis (non-conglomerative). Evaluate under the criteria for chronic obstructive airway disease in 3.02; or

B. Interstitial or disseminated fibrosis or conglomerative disease. Evaluate under the criteria for pulmonary fibrosis in 3.04; or

C. Where A and B are mixed or cannot be differentiated—evaluate under the criteria in 3.02 or 3.04.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood streaked sputum) occurring at least once every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria for chronic obstructive airway disease in 3.02 or where extensive fibrosis is evident on chest film, under the criteria for pulmonary fibrosis in 3.04.

3.08 *Pulmonary tuberculosis (caused by M. tuberculosis of pathogenic atypical mycobacteria).* Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in 3.02, 3.04, or 3.05.

3.09 *Mycotic infection of lung.* With:

A. Culture of specific organisms from sputa and serial X-ray evidence of increasing or decreasing extent of lesion, both persisting for at least 3 months despite prescribed therapy; or

B. Culture of specific organisms from sputa and current X-ray evidence of a lesion and episodes of hemoptysis occuring at least once every 2 months; or

C. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in 3.02, 3.04, or 3.05.

3.11 *Cor pulmonale.* Evaluate under the criteria for 4.02D.

3.12 *Pleurocutaneous fistula* with persistent purulent drainage.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and-or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart disease or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertensive, rheumatic, pulmonary, congenital, or other organic heart disease). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with the clinical diagnosis. (Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be causally related to the current episode of severe impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart disease such as caused by cardiomyopathy or aortic stenosis may result in severe impairment due to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptoms of dyspnea, fatigue, rhythm disturbances, etc. should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vascular disease* does not result in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart disease* may result in severe impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F, G, or H.

E. *Chest pain of cardiac origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing, squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. Pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and response to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (e.g., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing, appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large QRS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracings should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Computer interpretations without the original or legible copies of the ECG tracings are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of appropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A tracing should be taken at approximately 5 METs of exercise (treadmill speed of 1.7 miles per hour at a 10 percent grade as in Stage I of the Bruce protocol) and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at that time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test should be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise tests should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full

development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen (as typified by the Bruce protocol). The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to that heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate. Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled severe hypertension; severe aortic stenosis; severe pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments, or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of the social security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in § 4.04A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test. If there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of METs (metabolic equivalent units). One MET is the basal $O_2$ requirement of the body in an inactive state, sitting quietly. It is considered by most authorities to be approximately 3.5 ml. $O_2$/kg./min.

H. *Angiographic evidence.*

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with severe proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should describe the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch;

b. Left anterior descending coronary artery proximal to the first septal perforator; and

c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

I. *Results of other tests.* Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the Listing.

J. *Major surgical procedures.* The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment of severity postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the severity of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

**4.01 Category of Impairments, Cardiovascular System**

4.02 *Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema).* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with $S_{V_1}$ plus $R_{V_5}$ (or $R_{V_6}$) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:

1. ECG showing QRS duration less than 0.12 second with $S_{V_1}$ plus $R_{V_5}$ (or $R_{V_6}$) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead $V_1$ *and* progressive decrease in R/S amplitude from lead $V_1$ to $V_5$ or $V_6$; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram of fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead $V_1$ *and* progressive decrease in R/S amplitude from lead $V_1$ to $V_5$ or $V_6$.

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 or 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain of cardiac origin as described in 4.00E.* With:

A. Treadmill exercise test (see 4.00F and G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or down-sloping ischemic depression of the ST segment to 1.0 mm. or greater, clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

3. ST segment elevation to 3 mm. or greater; or

4. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least 1/3rd of R wave and with a duration of 0.04 second or more. (If these are present in leads III and aVF only, the requisite Q wave findings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see § 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and aVL and $V_6$ or (b) leads II and III and aVF or (c) leads $V_3$ through $V_6$; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and aVL and $V_6$ or (b) leads II and III and aVF or (c) leads $V_3$ through $V_6$; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or $V_1$ or $V_2$; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, $V_2$ to $V_6$ *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of social security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, $V_5$, or $V_6$, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7); or

D. Left ventricular ejection fraction of 30 percent or less measured at cardiac catheterization or by echocardiography.

4.05 *Recurrent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated syncopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Arteriosclerosis obliterans or thrombo-angiitis.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of social security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication and absence of peripheral arterial pulsations in the femoral, popliteal, dorsalis pedis, and posterior tibial arteries by Doppler or plethysmography, in one extremity; or

C. Amputation at or above the tarsal region due to peripheral vascular disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in severe impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g., enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders, of malabsorption, malassimilation, or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a severe impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent or less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under § 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy).* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy; or

D. Weight loss as described under § 5.08.

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices; or

B. Performance of a shunt operation for esophageal varices; or

C. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Hepatic encephalopathy. Evaluate under the criteria in 12.02; or

E. Confirmation of chronic liver disease by liver biopsy (obtained independent of social security disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less.

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater on repeated examinations.

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 *Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrences of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under § 5.08.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as described under § 5.08.

5.08 *Weight loss (due to any gastrointestinal disorder).* With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less; or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4. Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglycemia, or ketosis; or

5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.08.

**Table I.—*Men***

| Height (inches) [1] | Weight (pounds) |
|---|---|
| 61 | 90 |
| 62 | 92 |
| 63 | 94 |
| 64 | 97 |
| 65 | 99 |
| 66 | 102 |
| 67 | 106 |
| 68 | 109 |
| 69 | 112 |
| 70 | 115 |
| 71 | 118 |
| 72 | 122 |
| 73 | 125 |
| 74 | 128 |
| 75 | 131 |
| 76 | 134 |

**Table II.—*Women***

| Height (inches) [1] | Weight (pounds) |
|---|---|
| 58 | 77 |
| 59 | 79 |
| 60 | 82 |
| 61 | 84 |
| 62 | 86 |
| 63 | 89 |
| 64 | 91 |
| 65 | 94 |
| 66 | 98 |
| 67 | 101 |
| 68 | 104 |
| 69 | 107 |
| 70 | 110 |
| 71 | 114 |
| 72 | 117 |
| 73 | 120 |

**Table III.—*Men***

| Height (inches) [1] | Weight (pounds) |
|---|---|
| 61 | 95 |
| 62 | 98 |
| 63 | 100 |
| 64 | 103 |
| 65 | 106 |
| 66 | 109 |
| 67 | 112 |
| 68 | 116 |
| 69 | 119 |
| 70 | 122 |
| 71 | 126 |
| 72 | 129 |
| 73 | 133 |
| 74 | 136 |
| 75 | 139 |
| 76 | 143 |

**Table IV.—*Women***

| Height (inches) [1] | Weight (pounds) |
|---|---|
| 58 | 82 |
| 59 | 84 |
| 60 | 87 |
| 61 | 89 |
| 62 | 92 |
| 63 | 94 |
| 64 | 97 |
| 65 | 100 |
| 66 | 104 |
| 67 | 107 |
| 68 | 111 |
| 69 | 114 |
| 70 | 117 |
| 71 | 121 |
| 72 | 124 |
| 73 | 128 |

[1] Height measured without shoes.

### 6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritoneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post-transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neuropathy, etc.), and side effects of corticosteroids or immunosuppressive agents. A convalescent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

### 6.01 Category of Impairments, Genito-Urinary System

6.02 *Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolithiasis, polycystic disease, bilateral hydronephrosis, etc.).* With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatinine to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, severe osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.08, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.06 *Nephrotic syndrome, with severe anasarca, persistent for at least 3 months despite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less *and* proteinuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

### 7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen-carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vaso-

occlusive or aplastic episodes should be documented by description of severity, freguency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with anti-hemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

**7.01 Category of Impairments, Hemic and Lymphatic System**

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).*

A. Evaluate the resulting impairment under criteria for the affected body system; or

B. Requiring one or more blood transfusions on an average of at least once every 2 months.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (nemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of §7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresis. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain or pathological fracture; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least one month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

**8.00 Skin**

A. *Skin lesions* may result in severe, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problem, evaluation should occur according to the criteria in the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

**8.01 Category of Impairments, Skin**

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections.* With extensive fungating, ulcerating lesions not responding to prescribed treatment.

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions, including involvement of the hands or feet which impose a severe limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axillae or perineum not responding to prescribed medical treatment and not amenable to surgical treatment.

**9.00 Endocrine System**

*Cause of impairment.* Impairment is caused by overproduction or underproduction of hormones, resulting in structural or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

**9.01 Category of Impairments, Endocrine**

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or $pCO_2$ or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral vascular disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04).

**10.00 Multiple Body Systems**

A. The impairments included in this section usually involve more than a single body system.

B. Long-term obesity will usually be associated with disorders in the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems and the advent of such disorders is the major cause of impairment. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

**10.01 Category of Impairments, Multiple Body Systems**

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progessive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

B. Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

C. History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

E. Respiratory disease with total forced vital capacity equal to or less than 2.0 L. or a level of hypoxemia at rest equal to or less than the values of the following table:

| Arterial $pCO_2$ (mm Hg) and | Arterial $pO_2$ equal to or less than (mm Hg) |
|---|---|
| 30 or below | 65 |
| 31 | 64 |
| 32 | 63 |
| 33 | 62 |
| 34 | 61 |
| 35 | 60 |
| 36 | 59 |
| 37 | 58 |
| 38 | 57 |
| 39 | 56 |
| 40 or above | 55 |

Table I.—*Men*

| Height (inches) | Weight (pounds) |
|---|---|
| 60 | 246 |
| 61 | 252 |
| 62 | 258 |
| 63 | 264 |
| 64 | 270 |
| 65 | 276 |
| 66 | 284 |
| 67 | 294 |
| 68 | 302 |
| 69 | 310 |
| 70 | 318 |
| 71 | 328 |
| 72 | 336 |
| 73 | 346 |
| 74 | 356 |
| 75 | 364 |
| 76 | 374 |

Table II.—*Women*

| Height (inches) | Weight (pounds) |
|---|---|
| 56 | 208 |
| 57 | 212 |
| 58 | 218 |
| 59 | 224 |
| 60 | 230 |
| 61 | 236 |
| 62 | 242 |
| 63 | 250 |
| 64 | 258 |
| 65 | 266 |
| 66 | 274 |
| 67 | 282 |
| 68 | 290 |
| 69 | 298 |
| 70 | 306 |
| 71 | 314 |
| 72 | 322 |

**11.00 Neurological**

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology, severity will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such description includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate the extent to which description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electroencephalogram (EEG).

Under 11.02 and 11.03, a severe impairment is considered present only if it persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsant therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepsy. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs may serve to indicate whether the prescribed medication is being taken. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption or metabolism of the drug. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must also be assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment severity.

B. *Brain tumors.* The diagnosis of malignant brain tumor should be established under the criteria described in 13.00B for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected duration (see 11.05A). In cases of benign tumors (see 11.05B) the severity and duration of the impairment will be determined on the bases of the symptoms, signs, and pertinent laboratory findings.

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

**11.01 Category of Impairments, Neurological**

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Diurnal episodes (loss of consciousness and convulsive seizures); or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—minor motor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.* With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained

disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02.

11.10 *Amyotrophic lateral sclerosis.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Presistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.* With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.* With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia)* with disorganization of motor function as described in 11.04B or 11.15B, not significantly improved by prescribed treatment.

11.17 *Degenerative disease not listed elsewhere, such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:* Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

11.19 *Syringomyelia.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

## 12.00 Mental Disorders

A. *Introduction:* The evaluation of disability applications on the basis of mental disorders requires consideration of the nature and clinical manifestations of the medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, as reflected by (1) daily activities both in the occupational and social spheres; (2) range of interest; (3) ability to take care of personal needs; and (4) ability to relate to others. This evaluation must be based on medical evidence consisting of demonstrable clinical signs (medically demonstrable phenomena, apart from the individual's symptoms, which indicate specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality) and laboratory findings (including psychological tests) relevant to such issues as restriction of daily activities, constriction of interests, deterioration of personal habits (including personal hygiene), and impaired ability to relate to others.

The severity and duration of mental impairment(s) should be evaluated on the basis of reports from psychiatrists, psychologists, and hospitals, in conjunction with adequate descriptions of daily activites from these or other sources. Since confinement in an institution may occur because of legal or social requirements, confinement per se does not establish that impairment is severe. Similarly, release from an institution does not establish improvement. As always, severity and duration of impairment are determined by the medical evidence. A description of the individual's personal appearance and behavior at the time of the examination is also important to the evaluation process.

Diagnosis alone is insufficient as a basis for evaluation of the severity of mental impairment(s). Accordingly, the criteria of severity under mental disorders are arranged in four comprehensive groups; chronic brain syndromes (see 12.02), functional (nonorganic) psychotic disorders (see 12.03), functional nonpsychotic disorders (see 12.04), and mental retardation (see 12.05). Each category consists of a set of clinical findings, one or more of which must be met, and a set of functional restrictions, all of which must be met. The functional restrictions are to be interpreted in the light of the extent to which they are imposed by psychopathology.

The criteria for severity of mental impairment(s) are so constructed that a decision can be reached even if there are disagreements regarding diagnosis. All available clinical and laboratory evidence must be considered since it is not unusual to find, in the same individual, signs and test results associated with several pathological conditions, mental or physical. For example, an individual might show evidence of depression, chronic brain syndrome, cirrhosis of the liver, etc., in various combinations.

In some cases, the results of well-standardized psychological tests, such as the Wechsler Adult Intelligence Scale (WAIS) and the Minnesota Multiphasic Personality Inventory (MMPI), may contribute to the assessment of severity of impairment. To provide full documentation, the psychological report should include key data on which the report was based, such as MMPI profiles, WAIS subtest scores, etc.

B. *Discussion of Mental Disorders:*

1. *Chronic brain syndromes* (organic brain syndromes) result from persistent, more or less irreversible, diffuse impairment of cerebral tissue function. They are usually permanent and may be progressive. They may be accompanied by psychotic or neurotic behavior superimposed on organic brain pathology. The degree of impairment may range from mild to severe. Acute brain syndromes are temporary and reversible conditions with favorable prognosis and no significant residuals. Occasionally, an acute brain syndrome may progress into a chronic brain syndrome.

2. *Functional psychotic disorders* are characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue. Mood disorders (involutional psychosis, manic-depressive illness, psychotic depressive reaction) or thought disorders (schizophrenias and paranoid states) are characterized by varying degrees of personality disorganization and accompanied by a corrresponding degree of inability to maintain contact with reality (e.g., hallucinations, delusions).

3. *Functional nonpsychotic disorders* are likewise characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue (psychophysiologic, neurotic, personality and certain other nonpsychotic disorders).

a. *Psychophysiologic (autonomic and visceral) disorders* (e.g., cardiovascular, gastrointestinal, genitourinary, musculoskeletal, respiratory). In these conditions, the normal physiological expression of emotions is exaggerated by chronic emotional tensions, eventually leading to a disruption of the autonomic regulatory system and resulting in various visceral disorders. If the condition persists, it may lead to demonstrable structural changes (e.g., peptic ulcer, bronchial asthma, dermatitis).

b. *Neurotic disorders* (e.g., anxiety, depressive, hysterical, obsessive-compulsive, and phobic neuroses). In these conditions there are no gross falsifications of reality such as observed in the psychoses in the form of hallucinations or delusions. Neuroses are characterized by reactions to deep-seated conflicts and are classified by the defense mechanisms the individual employs to stave off the threat of emotional decompensation (e.g., anxiety, depression, conversion, obsessive-compulsive, or phobic mechanisms). Anxiety or depression occurring in connection with overwhelming

external situations (i.e., situational reactions) are self-limited and the symptoms usually recede when the situational stress diminishes.

c. *Other functional nonpsychotic disorders*, including paranoid, cyclothymic, schizoid, explosive, obsessive-compulsive, hysterical, asthenic, antisocial, passive-aggressive, and inadequate personality; sexual deviation; alcohol addiction and drug addiction. These disorders are characterized by deeply ingrained maladaptive patterns of behavior; generally of long duration. Unlike neurotic disorders, conflict in these cases is not primarily within the individual but between the individual and his environment. In many of these conditions, the patient may experience little anxiety and little or no sense of distress, except when anxiety and distress are consequences of maladaptive behavior.

4. *Mental retardation* denotes a lifelong condition characterized by below-average intellectual endowment as measured by well-standardized intelligence (IQ) tests and associated with impairment in one or more of the following areas: learning, maturation, and social adjustment. The degree of impairment should be determined primarily on the basis of intelligence level and the medical report. Care should be taken to ascertain that test results are consistent with daily activities and behavior. A well-standardized, comprehensive intelligence test, such as the Wechsler Adult Intelligence Scale (WAIS), should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices or the Arthur Point Scale, may be substituted.

Unfortunately, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function. In this connection, it may be noted that on the WAIS, perhaps currently the most widely used measure of intellectual ability in adults, IQ's of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it will be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by the IQ scores. Where more than one IQ is customarily derived from the test administered, i.e., where Verbal, Performance, and Full Scale IQ's are provided as on the WAIS, the lowest of these is to be used in conjunction with 12.05.

In cases where the nature of the individual's impairment is such that testing, as described above, is precluded, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by district office or State DDS personnel, reports from educational institutions, and information furnished by public welfare agencies or other reliable, objective sources should be considered as additional evidence.

**12.01 Category of Impairments, Mental**

12.02 *Chronic brain syndromes* (organic brain syndromes). With both A and B:

A. Demonstrated deterioration in intellectual functioning, manifested by persistence of one or more of the following clincial signs:

1. Marked memory defect for recent events; or

2. Impoverished, slowed, perseverative thinking, with confusion or disorientation; or

3. Labile, shallow, or coarse affect;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.03 *Functional psychotic disorders* (mood disorders, schizophrenias, paranoid states). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Depression (or elation); or

2. Agitation; or

3. Psychomotor disturbances; or

4. Hallucinations or delusions; or

5. Autistic or other regressive behavior; or

6. Inappropriateness of affect; or

7. Illogical association of ideas;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and seriously impaired ability to relate to other people.

12.04 *Functional nonpsychotic disorders* (psychophysiologic, neurotic, and personality disorders; addictive dependence on alcohol or drugs). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Demonstrable and persistent structural changes mediated through psychophysiological channels (e.g., duodenal ulcer); or

2. Recurrent and persistent periods of anxiety, with tension, apprehension, and interference with concentration and memory; or

3. Persistent depressive affect with insomnia, loss of weight, and suicidal preoccupation; or

4. Persistent phobic or obsessive ruminations with inappropriate, bizarre, or disruptive behavior; or

5. Persistent complusive, ritualistic behavior; or

6. Persistent functional disturbance of vision, speech, hearing, or use of a limb with demonstrable structural or trophic changes; or

7. Persistent, deeply ingrained, maladaptive patterns of behavior manifested by either:

a. Seclusiveness or autistic thinking; or

b. Pathologically inappropriate suspiciousness or hostility;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.05 *Mental retardation.* As manifested by:

A. Severe mental and social incapacity as evidenced by marked dependence upon others for personal needs (e.g., bathing, washing, dressing, etc.) and inability to understand the spoken word and inability to avoid physical danger (fire, cars, etc.) and inability to follow simple directions and inability to read, write, and perform simple calculations; or

B. IQ of 59 or less (see 12.00B4); or

C. IQ of 60 to 69 inclusive (see 12.00B4) and a physical or other mental impairment imposing additional and significant work-related limitation of function.

**13.00 Neoplastic Disease—Malignant**

A. *Introduction:* The determination of the level of severity resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post-therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumor should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation:* Usually, when the malignant tumor consists only of a local lesion with metastasis to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastasis is not anticipated. Exceptions are noted in 13.02E, 13.03, 13.05B, 13.09 B and E, 13.11 A and F, 13.13B, 13.16 B and C, 13.21B, 13.22 A and B, and 13.24A. For adjudicative purposes, "distant metastasis" or "metastasis beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable." These situations are usually followed by severe impairment within 6 months to 1 year.

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the severity of the impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment usually will be considered to be severe. Exceptions are hormone-dependent tumors, isotope-sensitive metastases,

metastases from seminoma of the testicles which are controlled by definitive therapy, or distant metastases which have apparently disappeared and have not been evident for 3 or more years.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):

A. Inoperable; or

B. Not controlled by prescribed therapy; or

C. Recurrent after radical surgery or irradiation; or

D. With distant metastasis; or

E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of skin:*

A. Angiosarcoma with metastasis to regional lymph nodes or beyond; or

B. Mycosis fungoides with lymph node or visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*

A. Recurrent after wide excision; or

B. With metastasis to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*

A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or

B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or

C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastasis beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastasis beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*

A. Inoperable carcinoma; or

B. Inflammatory carcinoma; or

C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or

D. Distant metastasis from breast carcinoma (bilateral breast carcinoma, synchronous or metachronus, is usually primary in each breast); or

E. Sarcoma with metastasis anywhere.

13.10 *Skeletal system* (exclusive of the jaw):

A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or

B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*

A. Sarcoma of any type with metastasis; or

B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastasis; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intraoranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastasis.

13.12 *Brain or spinal cord:*

A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumors under the criteria described in 11.05 and 11.06.

13.13 *Lungs:*

A. Unresectable; or

B. With metastases; or

C. Recurrent after resection; or

D. Incomplete excision; or

E. Oat cell carcinoma.

13.14 *Pleura or mediastinum:*

A. Malignant mesothelioma of pleura; or

B. Malignant tumors, metastatic to pleura; or

C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*

A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or

C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*

A. Carcinoma or sarcoma of the upper two-thirds of the esophagus; or

B. Carcinoma or sarcoma of the distal one-third of the esophagus with metastasis to the regional lymph nodes or extension to surrounding structures; or

C. Carcinoma of the stomach with metastasis to the regional lymph nodes or extension to surrounding structures; or

D. Sarcoma of stomach not controlled by prescribed therapy; or

E. Inoperable carcinoma; or

F. Recurrence or metastasis after resection.

13.17 *Small intestine:*

A. Carcinoma, sarcoma, or carcinoid tumor with metastasis beyond the regional lymph nodes; or

B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or

C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—carcinoma or sarcoma.

A. Unresectable; or

B. Metastasis beyond the regional lymph nodes, or

C. Recurrence or metastasis after resection.

13.19 *Liver or gallbladder:*

A. Primary or metastatic malignant tumors of the liver; or

B. Carcinoma of the gallbladder; or

C. Carcinoma of the bile ducts, unresectable or with metastases.

13.20 *Pancreas:*

A. Carcinoma except islet cell carcinoma; or

B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters*—carcinoma.

A. Unresectable; or

B. With metastasis.

13.22 *Urinary bladder*—carcinoma. With:

A. Infiltration beyond the bladder wall; or

B. Metastasis; or

C. Unresectable; or

D. Recurrence after total cystectomy; or

E. Evaluate urinary diversion after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*

A. Choriocarcinoma; or

B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).

A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent after total hysterectomy; or

C. Total pelvic exenteration.

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:

A. Ascites with demonstrated malignant cells; or

B. Unresectable infiltration; or

C. Unresectable metastasis to omentum or elsewhere in the peritoneal cavity; or

D. Distant metastasis.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic System.

13.28 *Uterine (Fallopian) tubes*—carcinoma or sarcoma, unresectable or with metastasis.

*Part B*

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate

consideration to the particular disease process in childhood).

Sec.
100.00 Growth Impairment.
101.00 Musculoskeletal System.
102.00 Special Senses and Speech.
103.00 Respiratory System.
104.00 Cardiovascular System.
105.00 Digestive System.
106.00 Genito-Urinary System.
107.00 Hemic and Lymphatic System.
109.00 Endocrine System.
110.00 Multiple Body Systems.
111.00 Neurological.
112.00 Mental and Emotional Disorders.
113.00 Neoplastic Diseases—Malignant.

**100.00 Growth impairment**

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

*Determinations of growth impairment* should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

**100.01 Category of impairments, growth**

100.02 *Growth impairment,* considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment,* not identified as being related to an additional specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

**101.00 Musculoskeletal System**

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases.* Vol. 23; 1972–1973 Series; p. 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment,* Chicago, American Medical Association, 1971 Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders, septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

**101.01 Category of impairments, musculoskeletal**

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite six months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss).

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height.

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

**102.00 Special Senses and Speech**

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

*The accommodative reflex* is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of an ophthalmologic disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction in 102.08 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in § 102.08.

**102.01 Category of impairments, special sense organs**

102.02 *Impairment of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less.

B. For children below 3 years of age at time of adjudication:

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear.

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

### 103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters. The reported $FEV_1$ should represent the largest of at least three satisfactory attempts, and should be within 10 percent of another $FEV_1$. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presense of acute bronchospasm, or where the $FEV_1$ is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and the cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

### 103.01 Category of impairments, respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. $FEV_1$ equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

Table I

| Height (in centimeters) | $FEV_1$ equal to or less than (liters) |
|---|---|
| 110 or less | 0.6 |
| 120 | 0.7 |
| 130 | 0.9 |
| 140 | 1.1 |
| 150 | 1.3 |
| 160 | 1.5 |
| 170 or more | 1.6 |

### 104.00 Cardiovascular System

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included.

B. *Evaluation of cardiovascular impairments in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catherization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnoses made according to the revised Jones Criteria.

### 104.01 Category of impairments, cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

Table I—Tachycardia at Rest

| Age | Apical Heart (beats per minute) |
|---|---|
| Under 1 yr | 150 |
| 1 through 3 yr | 130 |
| 4 through 9 yr | 120 |
| 10 through 15 yr | 110 |
| Over 15 yr | 100 |

Table II.—*Tachypnea at Rest*

| Age | Respiratory rate over (per minute) |
|---|---|
| Under 1 yr | 40 |
| 1 through 5 yr | 35 |
| 6 through 9 yr | 30 |
| Over 9 yr | 25 |

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.2.

Table III.—*Elevated Blood Pressure*

| Age | S (over) mm. | Diastolic (over) in mm. |
|---|---|---|
| Under 6 mo | 95 | 60 |
| 6 mo. to 1 yr | 110 | 70 |
| 1 through 5 yrs | 115 | 80 |
| 9 through 11 yrs | 120 | 80 |
| 12 through 15 yrs | 130 | 80 |
| Over 15 yrs | 140 | 80 |

104.04 **Cyanotic congenital heart disease.** With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristics squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial $O_2$ saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A–V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and

other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 Digestive System

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth, and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of impairments, disgestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in 105.00.* With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post-transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of impairments, genito-urinary

106.02 *Chronic renal disease.* With:

A. BUN of 30 mg./100 ml. or greater; or

B. Serum creatinine of 3.0 mg./100 ml. or greater; or

C. Creatinine clearance equal to or less than 42 ml./min./1.73 $m^2$; or

D. Chronic renal dialysis program for irreversible renal failure; or

E. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73$m^2$/day.

107.00 Hemic and Lymphatic System

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 category of impairments, hemic and lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

109.00 Endocrine System

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the

secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

**109.01 Category of impairments, endrocrine**

109.02 *Thyroid Disorders.*

A. *Hyperthyroidism (as documented in 109.00C).* With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine ($T_4$) and either elevated free $T^4$ or resin $T_3$ uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine ($T_3$).

B. *Hypothyrodism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum calcium; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudo-hypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under the criteria in 100.02 A and B.

109.05 *Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycorticosteroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 109.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.2B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.02 A or B.

109.12 *Hypoglycemia (as documented in 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonodal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

**110.00 Multiple Body Systems**

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

**110.01 Category of impairments, mutiple body systems**

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

E. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

**111.00 Neurological**

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-Gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

**111.01 Category of impairment, neurological**

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Diurnal episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors.* A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma, or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; of

B. Gait and station.

111.07 *Cerebral palsy.* With: A. Motor dysfunction meeting the requirements of 111.06 or 101.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing, or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of § 111.03 or § 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in effective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

**112.00 Mental and Emotional Disorders**

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

*Measures of intellectual functioning.* Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children (WISC), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved.

*Developmental milestone criteria.* In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics text.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completely substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

**112.01 Category of impairments, mental and emotional**

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; construction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*—A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

**113.00 Neoplastic Diseases Malignant**

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic

schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastasis, and significant post-therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.* Consider under a disability:

A. For 2½ years from the time initial diagnosis, or

B. For 2½ years from the time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a disability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:

A. Extension across the midline; or

B. Distant metastasis; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

## APPENDIX 2—MEDICAL—VOCATIONAL GUIDELINES

Sec.

200.00 Introduction.
201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and

nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

**Table No. 1.**—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 201.01 | Advanced age | Limited or less | Unskilled or none | Disabled. |
| 201.02 | do | do | Skilled or semiskilled—skills not transferable [1]. | Do. |
| 201.03 | do | do | Skilled or semiskilled—skills transferable [1]. | Not disabled. |
| 201.04 | do | High school graduate or more—does not provide for direct entry into skilled work [2]. | Unskilled or none | Disabled. |
| 201.05 | do | High school graduate or more—provides for direct entry into skilled work [2]. | do | Not disabled. |
| 201.06 | do | High school graduate or more—does not provide for direct entry into skilled work [2]. | Skilled or semiskilled—skills not transferable [1]. | Disabled. |

Table No. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)—Continued*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 201.07 | do | do | Skilled or semiskilled—skills transferable [1]. | Not disabled. |
| 201.08 | do | High school graduate or more—provides for direct entry into skilled work [2]. | Skilled or semiskilled—skills not transferable [1]. | Do. |
| 201.09 | Closely approaching advanced age. | Limited or less | Unskilled or none | Disabled. |
| 201.10 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 201.11 | do | do | Skilled or semiskilled—skills transferable. | Not disabled. |
| 201.12 | do | High school graduate or more—does not provide for direct entry into skilled work [3]. | Unskilled or none | Disabled. |
| 201.13 | do | High school graduate or more—provides for direct entry into skilled work [3]. | do | Not disabled. |
| 201.14 | do | High school graduate or more—does not provide for direct entry into skilled work [3]. | Skilled or semiskilled—skills not transferable. | Disabled. |
| 201.15 | do | do | Skilled or semiskilled—skills transferable. | Not disabled. |
| 201.16 | do | High school graduate or more—provides for direct entry into skilled work [3]. | Skilled or semiskilled—skills not transferable. | Do. |
| 201.17 | Younger individual age 45–49. | Illiterate or unable to communicate in English. | Unskilled or none | Disabled. |
| 201.18 | do | Limited or less—at least literate and able to communicate in English. | do | Not disabled. |
| 201.19 | do | Limited or less | Skilled or semiskilled—skills not transferable. | Do. |
| 201.20 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 201.21 | do | High school graduate or more | Skilled or semiskilled—skills not transferable. | Do. |
| 201.22 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 201.23 | Younger individual age 18–44. | Illiterate or unable to communicate in English. | Unskilled or none | Do. [4] |
| 201.24 | do | Limited or less—at least literate and able to communicate in English. | do | Do. [4] |
| 201.25 | do | Limited or less | Skilled or semiskilled—skills not transferable. | Do. [4] |
| 201.26 | do | do | Skilled or semiskilled—skills transferable. | Do. [4] |
| 201.27 | do | High school graduate or more | Unskilled or none | Do. [4] |
| 201.28 | do | do | Skilled or semiskilled—skills not transferable. | Do. [4] |
| 201.29 | do | do | Skilled or semiskilled—skills transferable. | Do. [4] |

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

Table No. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 202.01 | Advanced age | Limited or less | Unskilled or none | Disabled. |
| 202.02 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 202.03 | do | do | Skilled or semiskilled—skills transferable [1]. | Not disabled. |
| 202.04 | do | High school graduate or more—does not provide for direct entry into skilled work [2]. | Unskilled or none | Disabled. |
| 202.05 | do | High school graduate or more—provides for direct entry into skilled work [2]. | do | Not disabled. |
| 202.06 | do | High school graduate or more—does not provide for direct entry into skilled work [2]. | Skilled or semiskilled—skills not transferable. | Disabled. |

**Table No. 2.**—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 202.07 | do | do | Skilled or semiskilled—skills transferable [1] | Not disabled. |
| 202.08 | do | High school graduate or more—provides for direct entry into skilled work [2] | Skilled or semiskilled—skills not transferable. | Do. |
| 202.09 | Closely approaching advanced age. | Illiterate or unable to communicate in English. | Unskilled or none | Disabled. |
| 202.10 | do | Limited or less—At least literate and able to communicate in English. | do | Not disabled. |
| 202.11 | do | Limited or less | Skilled or semiskilled—skills not transferable. | Do. |
| 202.12 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 202.13 | do | High school graduate or more | Unskilled or none | Do. |
| 202.14 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 202.15 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 202.16 | Younger individual | Illiterate or unable to communicate in English. | Unskilled or none | Do. |
| 202.17 | do | Limited or less—At least literate and able to communicate in English. | do | Do. |
| 202.18 | do | Limited or less | Skilled or semiskilled—skills not transferable. | Do. |
| 202.19 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 202.20 | do | High school graduate or more | Unskilled or none | Do. |
| 202.21 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 202.22 | do | do | Skilled or semiskilled—skills transferable. | Do. |

[1] See 202.00(f).
[2] See 202.00(c).

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, an individual with a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled labor, who is not working and is no longer able to perform this labor because of a severe impairment(s), may still be found disabled even though the individual is able to do medium work.

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

**Table No. 3.**—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 203.01 | Closely approaching retirement age. | Marginal or none | Unskilled or none | Disabled. |
| 203.02 | do | Limited or less | None | Do. |
| 203.03 | do | Limited | Unskilled | Not disabled. |
| 203.04 | do | Limited or less | Skilled or semiskilled—skills not transferable. | Do. |

Table No. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)—Continued*

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 203.05 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.06 | do | High school graduate or more | Unskilled or none | Do. |
| 203.07 | do | High school graduate or more—does not provide for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.08 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.09 | do | High school graduate or more—provides for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.10 | Advanced age | Limited or less | None | Disabled. |
| 203.11 | do | do | Unskilled | Not disabled. |
| 203.12 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 203.13 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.14 | do | High school graduate or more | Unskilled or none | Do. |
| 203.15 | do | High school graduate or more—does not provide for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.16 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.17 | do | High school graduate or more—provides for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.18 | Closely approaching advanced age. | Limited or less | Unskilled or none | Do. |
| 203.19 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 203.20 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.21 | do | High school graduate or more | Unskilled or none | Do. |
| 203.22 | do | High school graduate or more—does not provide for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.23 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.24 | do | High school graduate or more—provides for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.25 | Younger individual | Limited or less | Unskilled or none | Do. |
| 203.26 | do | do | Skilled or semiskilled—skills not transferable. | Do. |
| 203.27 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.28 | do | High school graduate or more | Unskilled or none | Do. |
| 203.29 | do | High school graduate or more—does not provide for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |
| 203.30 | do | do | Skilled or semiskilled—skills transferable. | Do. |
| 203.31 | do | High school graduate or more—provides for direct entry into skilled work. | Skilled or semiskilled—skills not transferable. | Do. |

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

2. Subpart I of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

### Subpart I—Determining Disability and Blindness

General

Sec.
416.901 Scope of subpart.
416.902 General definition and terms for this subpart.

Determinations

416.903 Who makes disability and blindness determinations.
416.904 Determinations by other organizations and agencies.

Definition of Disability

416.905 Basic definition of disability.
416.906 Disability for children under age 18.
416.907 Disability under a State plan.
416.908 What is needed to show an impairment.
416.909 How long the impairment must last.
416.910 Meaning of substantial gainful activity.

Evidence

416.912 Your responsibility to submit evidence.
416.913 Medical evidence of your impairment.
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**Authority:** Issued under Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 86 Stat. 52, 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

## Subpart I—Determining Disability and Blindness

### General

**§ 416.901 Scope of subpart.**

In order for you to become entitled to any benefits based upon disability or blindness you must be disabled or blind as defined in title XVI of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability or blindness determinations and state that disability and blindness determinations made under other programs are not binding on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 416.905–416.910.

(c) Sections 416.912–416.918 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what information should be included in medical reports.

(d) Our general rules on evaluating disability are stated in §§ 416.920–416.923. We describe the steps that we go through and the order in which they are considered.

(e) Our rules on medical considerations are found in §§ 416.925–416.930. We explain in these rules—

(1) The purpose and use of the Listing of Impairments found in Appendix 1 of subpart P of Part 404 of this chapter;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 416.931–416.934 we explain that we may make payments on the basis of presumptive disability or presumptive blindness.

(g) In §§ 416.935–416.939 we explain the rules which apply in cases of drug addiction and alcoholism.

(h) In §§ 416.945–416.946 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(i) Our rules on vocational considerations are found in §§ 416.960–416.969. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, and describe how the Guidelines in Appendix 2 of subpart P of Part 404 of this chapter apply to claims under Part 416.

(j) Our rules on substantial gainful activity are found in §§ 416.971–416.974. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(k) In §§ 416.981–416.985 we discuss blindness.

(l) Our rules on when disability or blindness continues and stops are contained in §§ 416.988–416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

**§ 416.902 General definitions and terms for this subpart.**

As used in this subpart—"Secretary" means the Secretary of Health and Human Services.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability or blindness for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for or is receiving benefits based on disability or blindness.

### Determinations

**§ 416.903 Who makes disability and blindness determinations.**

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability and blindness determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

**§ 416.904 Determinations by other organizations and agencies.**

A decision by any nongovernmental agency or any other governmental

agency about whether you are disabled or blind is based on its rules and is not our decision about whether you are disabled or blind. We must make a disability or blindness determinations based on social security law. Therefore, a determination made by another agency that you are disabled or blind is not binding on us.

Definition of Disability

**§ 416.905 Basic definition of disability.**

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 416.981 through 416.985.

**§ 416.906 Disability for children under age 18.**

If you are under age 18, we will consider you disabled if you are suffering from any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult (a person over age 18) disabled.

**§ 416.907 Disability under a State plan.**

You will also be considered disabled for payment of supplemental security income benefits if—

(a) You were found to be permanently and totally disabled as defined under a State plan approved under titles XIV or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your disability for the month of December 1973 and for at least one month before July 1973; and

(c) You continue to be disabled as defined under the State plan.

**§ 416.908 What is needed to show an impairment.**

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms. (See § 416.928 for further information about what we mean by symptoms, signs, and laboratory findings.)

**§ 416.909 How long the impairment must last.**

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

**§ 416.910 Meaning of substantial gainful activity.**

Substantial gainful activity means work that—(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for pay or profit.

(See § 416.972 for further details about what we mean by substantial gainful activity.)

Evidence

**§ 416.912 Your responsibility to submit evidence.**

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which we receive evidence. We will help you in getting medical reports when you give us permission to request them from your doctors and other medical sources. If we ask, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 416.960 through 416.969 we discuss in more detail the evidence we need when we consider vocational factors.)

**§ 416.913 Medical evidence of your impairment.**

(a) *Acceptable sources.* We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (see paragraph (f) of this section for the evidence needed for statutory blindness); and

(5) Persons authorized to send us a copy or summary of the medical records of a hospital, clinic, sanitorium, medical institution, or health care facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency. However, we will not return an uncertified copy or summary for certification unless there is some question about the document.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims).

(c) *Medical assessment.* The medical assessment should describe—

(1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carring, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also

help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources; and

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.).

(f) *Evidence we need to establish statutory blindness.* If you are applying for benefits on the basis of statutory blindness, we will require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

**§ 416.914 When we will purchase existing evidence.**

We need specific medical evidence to determine whether you are disabled or blind. We will pay for the medical evidence we request, if there is a charge. We will also be responsible for the cost of medical evidence we ask you to get.

**§ 416.915 Where and how to submit evidence.**

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability or blindness determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart C of this Part.

**§ 416.916 If you fail to submit medical and other evidence.**

You must cooperate in furnishing us with available medical evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

**§ 416.917 Consultative examination at our expense.**

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without being asked by us. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

(1) To obtain more detailed medical findings about your impairment(s);

(2) To obtain technical or specialized medical information;

(3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

**§ 416.918 If you do not appear at a consultative examination.**

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;

(4) Having had death or serious illness occur in your immediate family.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

## Evaluation of Disability

**§ 416.920 Evaluation of disability in general.**

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1 of subpart P of Part 404 of this chapter, or is equal to a listed impairment, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 416.962).

**§ 416.921 What we mean by an impairment that is not severe.**

(a) *Non-severe impairment.* An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitude necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

**§ 416.922 When you have two or more unrelated impairments—initial claims.**

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

**§ 416.923 How we determine disability for a child under age 18.**

We will find that a child under age 18 is disabled if he or she—(a) Is not doing any substantial gainful activity; and

(b) Has a medically determinable physical or mental impairment(s) which compares in severity to any impairment(s) which would make an adult (a person age 18 or over) disabled. This requirement will be met when the impairment(s)—

(1) Meets the duration requirement; and

(2) Is listed in Appendix 1 of subpart P of Part 404 of this chapter; or

(3) Is determined by us to be medically equal to an impairment listed in Appendix 1 of subpart P of Part 404 of this chapter.

Medical Considerations

**§ 416.925 Listing of impairments in Appendix 1 of subpart P of Part 404 of this chapter.**

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnoses of impairments.* We will not consider your impairment to be one listed in Appendix 1 of subpart P of Part 404 of this chapter solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing for that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

**§ 416.926 Medical equivalence.**

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 of subpart P of Part 404 of this chapter if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the listed impairment most like your impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement board, or a State agency authorized to make disability determinations.

**§ 416.927 Conclusion by physicians concerning your disability or blindness.**

We are responsible for determining whether you are disabled or blind. Therefore, a statement by your physician that you are "disabled" or "blind" or "unable to work" does not mean that we will determine that you are disabled or blind. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled" or "blind".

**§ 416.928 Symptoms, signs, and laboratory findings.**

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of (a) medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests.

**§ 416.929 How we evaluate symptoms, including pain.**

If you have a physical or mental impairment, you may have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that you are disabled based on your symptoms, including pain, unless medical signs or findings show that there is a medical condition that could be reasonably expected to produce these symptoms.

**§ 416.930 Need to follow prescribed treatment.**

(a) *What treatment you must follow.* In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work.

(b) *When you do not follow prescribed treatment.* If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

**Presumptive Disability and Blindness**

**§ 416.931 The meaning of presumptive disability or presumptive blindness.**

If you are applying for supplemental security income benefits on the basis of disability or blindness, we may pay you benefits before we make a formal finding of whether or not you are disabled or blind. In order to receive these payments, we must find that you are presumptively disabled or presumptively blind. You must also meet all other eligibility requirements for supplemental security income benefits. We may make these payments to you for a period not longer than 3 months. These payments will not be considered overpayments if we later find that you are not disabled or blind.

**§ 416.932 When presumptive payments begin and end.**

We may make payments to you on the basis of presumptive disability or presumptive blindness before we make a formal determination about your disability or blindness. The payments can not be made for more than 3 months. They start for a period of not more than 3 months beginning in the month we make the presumptive disability or presumptive blindness finding. The payments end the earliest of—

(a) The month in which we make a formal finding on whether or not you are disabled or blind;

(b) The month in which we make the third monthly payment based on presumptive disability or presumptive blindness to you; or

(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits).

**§ 416.933 How we make a finding of presumptive disability or presumptive blindness.**

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time of the presumptive disability or presumptive blindness decision, reflects a high degree of probability that you are disabled or blind. In the case of readily observable severe impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind without medical evidence. In all other cases, a finding of disability or blindness must be based on medical evidence or other information which, though not sufficient for a formal determination of disability or blindness, is sufficient for disability evaluators to find that there is a high degree of probability that you are disabled or blind.

**§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.**

We may make findings of presumptive disability and presumptive blindness in 10 specific impairment categories without obtaining any medical evidence. These specific impairment categories are—

(a) Amputation of two limbs;

(b) Amputation of a leg at the hip;

(c) Allegation of total deafness;

(d) Allegation of total blindness;

(e) Allegation of bed confinement or immobility without a wheelchair, walker, or crutches, due to a longstanding condition, excluding recent accident and recent surgery;

(f) Allegation of a stroke (cerebral vascular accident) more than 3 months in the past and continued marked difficulty in walking or using a hand or arm;

(g) Allegation of cerebral palsy, muscular dystrophy or muscle atrophy and marked difficulty in walking (e.g.,

use of braces), speaking or coordination of the hands or arms.

(h) Allegation of diabetes with amputation of a foot;

(i) Allegation of Down's syndrome (Mongolism); and

(j) Allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least 7 years of age. For example, a mother filing for benefits for her child states that the child attends (or attended) a special school, or special classes in school, because of mental deficiency or is unable to attend any type of school (or if beyond school age, was unable to attend), and requires care and supervision of routine daily activities.

Drug Addiction and Alcoholism

**§ 416.935 Medically determined drug addicts and alcoholics.**

(a) We will find that you are a medically determined drug addict or alcoholic if we determine you are disabled and we find that your drug addiction or alcoholism is a contributing factor material to the finding of your disability.

(b) You will not be medically determined to be a drug addict or alcoholic if—

(1) We find that you are disabled independent of drug addiction or alcoholism; or

(2) We find that you are eligible for benefits because of your age or blindness.

**§ 416.936 Treatment required for medically determined drug addicts and alcoholics.**

If you are medically determined by us to be a drug addict or alcoholic you must take appropriate treatment for your condition as a drug addict or alcoholic at an approved institution or facility, when this treatment is available. You are not expected to pay for this treatment. You will not be eligible for benefits for any month in which—

(a) You do not comply with the terms, conditions and requirements of the treatment; or

(b) You do not take the treatment when available to you.

**§ 416.937 What we mean by appropriate treatment.**

By appropriate treatment, we mean recognized medical or other professional procedures for treatment of drug addiction or alcoholism which is carried out at or under the supervision of, an approved institution or facility (or facilities). This treatment may include—

(a) Medical examination and treatment;

(b) Psychiatric, psychological and vocational counselling; or

(c) Other appropriate services for drug addiction or alcoholism.

**§ 416.938 What we mean by approved institutions or facilities.**

Institutions or facilities that may be approved by the Secretary include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal and State laws and regulations;

(b) An institution or facility accepted by a State for treatment of drug addicts or alcoholics when treatment was a requirement for eligibility for aid under the State plan in effect before the supplemental security income program; or

(c) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism.

**§ 416.939 How we consider whether treatment is available.**

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The existence of an obtainable treatment vacancy for you in an approved institution or facility;

(b) The location of the approved institution or facility, or the place where treatment, services or resources will be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is required for your drug addiction or alcoholism.

Residual Functional Capacity

**§ 416.945 Your residual functional capacity.**

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs; (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations[,] may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record[,] to enable us to decide to what extent your impairment keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment. Then, using the guidelines is §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities, (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders, we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

**§ 416.946 Responsibility for assessing and determining residual functional capacity.**

The State staff agency physicians or any other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency

staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicans, consultative physicians, or any other physician designated by the Secretary. (See § 416.945.) For cases at the hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the administrative law judge or Appeals Council.

## Vocational Considerations

### § 416.960 When your vocational background will be considered.

(a) *General.* We may consider vocational factors when you are applying for benefits based upon disability. We will never consider vocational factors in determining whether you are eligible for benefits based upon blindness.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 416.917).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exists in significant numbers in the nation's economy.

### § 416.961 Your ability to do work depends upon your residual functional capacity.

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country). Sections 416.963–416.965 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

### § 416.962 If you have done only arduous unskilled physical labor.

If you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) (except where the work is sporadic or is not medically advisable), we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either on a full-time or a reasonably regular part-time basis.

Example.—B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

### § 416.963 Your age as a vocational factor.

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain age as a vocational factor in Appendix 2 of subpart P of Part 404 of this chapter. However, we will not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of subpart P of Part 404 of this chapter).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50–54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 416.967(c)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60–64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits, we will ask you for evidence of your age.

### § 416.964 Your education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your

ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your educational abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

**§ 416.965 Your work experience as a vocational factor.**

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

**§ 416.966 Work which exists in the national economy.**

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which you live;

(2) A specific job vacancy exists for you; or

(3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

(1) Your inability to get work;

(2) Lack of work in your local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which you have worked;

(5) Cyclical economic conditions;

(6) No job openings for you;

(7) You would not actually be hired to do work you could otherwise do, or;

(8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country),

we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

(1) *Dictionary of Occupational Titles,* published by the Department of Labor;

(2) *County Business Patterns,* published by the Bureau of the Census;

(3) *Census Reports,* also published by the Bureau of the Census;

(4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

**§ 416.967 Physical exertion requirements.**

To determine the physical exertion requirments of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles,* published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.

**§ 416.968 Skill requirements.**

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

**§ 416.969 Listing of Medical-Vocational Guidelines in Appendix 2 of Subpart P of Part 404 of this chapter.**

The *Dictionary of Occupational Titles* includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We

apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

## Substantial Gainful Activity

### § 416.971 General.

The work that you have done during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled. (We explain the rules for persons who are statutorily blind in § 416.984.) Even if the work you have done was not substantial gainful activity, it may show that you are able to do more work than you actually did. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

### § 416.972 What we mean by substantial gainful activity.

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

### § 416.973 General information about work activity.

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

(f) *Possible effect on income and resource levels.* Your earnings, including earnings from work done during a trial work period, will be considered under the income and resource provisions in Subparts K and L of this part to determine whether or not your earnings cause you to exceed the limitations on income or resources under the Supplemental Security Income Program.

### § 416.974 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g. medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (1), (2), and (3) of this section.

(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful acitivity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978; or

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978; or

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than $200 a month in calendar years prior to 1976, $230 a month in calendar year 1976, $240 a month in calendar year 1977, $260 a month in calendar year 1978, $280 a month in calendar year 1979, $300 a month in calendar years after 1979.

However, if there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(1) and (2) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section, according to pay scales in your community.

**§ 416.975 Evaluation guides if you are self-employed.**

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(1) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 416.974(b)(1); or

(2) Your net income from the business averages less than the amounts described in § 416.974(b)(1) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

Blindness

**§ 416.981 Meaning of blindness as defined in the law.**

We will consider you blind under the law for payment of supplemental security income benefits if we determine that you are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

**§ 416.982 Blindness under a State plan.**

We shall also consider you blind for the purposes of payment of supplemental security income benefits if—

(a) You were found to be blind as defined under a State plan approved under title X or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your blindness for the month of December 1973; and

(c) You continue to be blind as defined under the State plan.

**§ 416.983 How we evaluate statutory blindness.**

We will find that you are blind if you are "statutorily blind" within the meaning of § 416.981. For us to find that you are statutorily blind, it is not necessary—

(a) That your blindness meet the duration requirement; or

(b) That you be unable to do any substantial gainful activity.

**§ 416.984 If you are statutorily blind and still working.**

There is no requirement that you be unable to work in order for us to find that you are blind. However, if you are working, your earnings will be considered under the income and resources rules in Subparts K and L of this part. This means that if your income or resources exceed the limitations, you will not be eligible for benefits, even though you are blind.

**§ 416.985 How we evaluate other visual impairments.**

If you are not blind as defined in the law, we will evaluate a visual impairment the same as we evaluate other impairments in determining disability. Although you will not qualify for benefits on the basis of blindness, you may still be eligible for benefits if we find that you are disabled as defined in §§ 416.905–416.907.

**§ 416.986 Why and when we will find that you are no longer entitled to benefits based on statutory blindness.**

(a) *If your vision does not meet the definition of blindness.* If you become entitled to payments as a statutorily blind person, we will find that your statutory blindness has ended beginning with the month your vision, as shown by current medical evidence, does not meet the definition of blindness. This will generally mean that your eligibility for payments will end two months after your blindness ended.

(b) *If you were found blind as defined in a State plan.* If you became eligible for payments because you were blind as defined in a State plan, we will find that your blindness ended in the later of—

(1) The first month in which your vision, as shown by medical or other evidence, did not meet the criteria of the appropriate State plan; or

(2) The first month in which your vision did not meet the definition of statutory blindness (§ 416.981).

(c) *If you do not cooperate with us.* If you are asked to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your blindness ended if you fail without a good reason to do what we ask. The month your blindness ends will be the month in which you fail to do what we ask.

(d) *Before we stop your payments.* Before we stop payment of your benefits we will give you a chance to give us your reasons why we should not stop payment. Subpart M of this Part describes your rights and the procedures we will follow.

Continuing or Stopping Disability or Blindness

**§ 416.988 Your responsibility to tell us of events that may change your disability or blindness status.**

If you are entitled to payments because you are disabled or blind, you should promptly tell us if—

(a) Your condition improves;

(b) Your return to work;

(c) You increase the amount of your work; or

(d) Your earnings increase.

**§ 416.989 We may investigate to find out whether you continue to be disabled or blind.**

After we find that you are disabled or blind, we must determine from time to time if you are still eligible for payment. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend payment of your payments, we will notify you in writing and give you an opportunity to reply. In § 416.990 we describe those events that may prompt us to investigate whether you continue to be disabled or blind.

**§ 416.990 When we will investigate whether your disability or blindness continues.**

(a) *General.* We investigate to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind, or if there is not enough evidence to support a finding that disability continues.

(b) *When we will investigate.* An investigation will be started if—

(1) We need a current medical report to see if you are able to do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or blindness or that you have returned to work;

(5) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training,

(ii) You have returned to work,

(iii) You are able to return to work; or

(6) Someone in a position to know of your physical or mental condition tells us that you are not disabled or blind or that you have returned to work, and it appears that the report could be substantially correct.

**§ 416.991 If your medical recovery was expected and you returned to work.**

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability or blindness has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 416.992).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your

scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

**§ 416.992 The trial work period.**

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still be considered disabled. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, during this trial work period we will evaluate your earnings under the income and resources rules in Subparts K and L of this part. This means that if your income or resources exceed the limitations, you will not be eligible for payments even though you have not worked a full 9 months. (See paragraph (e) of this section.) After the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1978 you earn more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1978 your net earnings are more than $75 a month ($50 a month is the figure for earning in any calendar year before 1979), or you work more than 15 hours a month in the business. We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house or in self-care.

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash payments.

(d) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to benefits. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

(e) *If you fail to meet other eligibility factors.* We will count the services you do while disabled towards your period of trial work even though you may be ineligible for payments for other reasons. The months in which you are eligible for payments will be evaluated for trial work purposes upon reestablishment of your eligibility for payments under this part as though your eligibility had not been interrupted.

**§ 416.993 We may ask you to help us determine if you are still disabled or blind.**

If you are entitled to payments because you are disabled or blind, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled or blind. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a determination. You must have a good reason for not giving us this information. (See § 416.994(d).

**§ 416.994 Why and when we will find that your disability has ended.**

(a) *General.* When the medical or other evidence in your file shows that your disability has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for benefits will end. Before we stop payment of your benefits, we will give you a chance to give us your reasons why we should not stop your benefits. Subparts M and N of this part describe your rights and the procedures we will follow. We may also stop payment of your benefits if you have not cooperated with us in getting information about your disability.

(b) *Disabled persons age 18 or over.* If you are age 18 or older, we will find that your disability ended in the earliest of the following months:

(1) The month in which your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity;

(2) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period).

(c) *Disabled persons under age 18.* If you are under age 18, we will find that your disability ended in the earliest of the following months—

(1) The month your impairment, as established by current medical evidence is not an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter or is not equal to a listed impairment;

(2) The month in which you demonstrate your ability to engage in substantial gainful activity (following completion of a trial work period).

(d) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail (without a good cause) to do what we ask. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

(e) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were found to be disabled under a State plan, we will find that your disability ended in the later of the following months—

(1) The month in which your disability, as shown by current medical or other evidence, does not meet the criteria of the appropriate State plan; or

(2) The month in which your disability ended under the provisions of paragraphs (b), (c) or (d) of this section.

**§ 416.998 If you become disabled by another impairment.**

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

[FR Doc. 80-25100 Filed 8-19-80; 8:45 am]
BILLING CODE 4110-07-M

Federal Register

Wednesday
August 20, 1980

Part III

# Pension Benefit Guaranty Corporation

## Reportable Events; Reporting and Notification Requirements

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2617

### Reporting and Notification Requirements for Reportable Events

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the reporting and notification requirements for reporting events imposed by the Employee Retirement Income Security Act of 1974 (the "Act"). The Act requires the plan administrator of any plan covered by the plan termination insurance provisions of the Act to notify the Pension Benefit Guaranty Corporation (the "PBGC") within 30 days after he or she knows or has reason to know of the occurrence of certain events that may indicate a possible danger of plan termination. The PBGC is authorized to waive these reporting obligations and instead require notification of the event(s) to be included in the plan's annual report to the PBGC. In this final rule, the PBGC is making extensive use of its authority to waive the 30-day notice requirement to reduce the plan administrator's reporting obligations and to enable the PBGC to direct its primary attention to those events that need to be reviewed on a priority basis. The PBGC is also exercising its authority to prescribe other reportable events (in addition to those specifically mentioned in the Act) by establishing three new reportable events-bankruptcy, insolvency or similar settlements; liquidation or dissolution; and, transactions involving a change of employer. As a consequence of this rule and the waivers it includes, the PBGC anticipates the number of 30-day notices that would otherwise be required of plan administrators will be drastically reduced.

**EFFECTIVE DATE:** This rule applies to all reportable events occurring on or after September 19, 1980.

**FOR FURTHER INFORMATION CONTACT:** David Weingarten, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; 202-254-3010. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 16, 1977, the Pension Benefit Guaranty Corporation (the "PBGC") published for comment in the Federal Register, 42 FR 59285, a proposed rule setting forth the reporting requirements for reportable events under § 4043 of the Employee Retirement Income Security Act of 1974 (the "Act"). (Correction published on December 1, 1977, at 42 FR 61051). The PBGC received a sustantial number of comments on the proposed rule and has given consideration to each of them in promulgating this final rule. The final rule contains a number of changes made in response to the comments received. It also contains many substantive changes initiated by the PBGC staff, and some non-substantive clarifying, correcting, and editorial changes initiated by the PBGC staff.

Substantive public comments on the proposed rule and significant differences between the proposed rule and the final rule are discussed below. In the discussion that follows, citations are to sections in the final regulation unless otherwise stated.

#### Overview

This regulation prescribes the reporting and notification requirements for reportable events under section 4043 of the Act. This regulation applies to all plans subject to section 4021, including multiemployer plans.[1]

The reporting requirements of section 4043 are intended to inform the PBGC of the occurrence of certain events that may result in a plan termination, or that may necessitate monitoring of the plan or termination of the plan by the PBGC. These requirements are designed to protect participants and the PBGC. The reportable events described in §§ 2617.11-2617.20 are those set forth by Congress in paragraphs (b)(1)-(8) of section 4043 of the Act. In addition, section 4043(b)(9) authorizes the PBGC to prescribe other reportable events. The PBGC is establishing three more reportable events, which are described in §§ 2617.21-2617.23.

Section 4043 authorizes the PBGC to waive the plan administrator's statutory obligation to file a 30-day notice, *i.e.*, the obligation to notify the PBGC within 30 days after he or she knows or has reason to know of the occurrence of a reportable event. The PBGC is making extensive use of this waiver authority in this final regulation, generally in those situations where the Internal Revenue Service (the "IRS") or the Department of Labor (the "DOL") is required to notify the PBGC (Act, section 4043 (c) and (d), or where the event is likely to have only a minimal impact on the plan, the employer, or the PBGC. The Act, however, requires that the plan's annual report provide notification to the PBGC of all reportable events, whether or not the 30-day notice requirement is waived.

Under this regulation, a plan administrator is not required to file a 30-day notice for the following five reportable events:

(1) IRS notice that a plan has ceased to be a plan described in section 4021(a)(2) of the Act (§ 2617.11);

(2) DOL determination of non-compliance with Title I of the Act (§ 2617.12);

(3) IRS determination of a termination or partial termination within the meaning of section 411(d)(3) of the Internal Revenue Code (§ 2617.15);

(4) Plan merger, consolidation or transfer (§ 2617.19); and

(5) Alternative method of compliance with reporting and disclosure requirements under section 110 of the Act (§ 2617.20).

In addition, a plan administrator is required to file a 30-day notice with the PBGC with respect to the following four reportable events only under limited circumstances:

(1) Amendment decreasing benefits payable (§ 2617.13).

(2) Active participant reduction (§ 2617.14);

(3) Inability to pay benefits when due (§ 2617.17); and

(4) Distribution to a substantial owner (§ 2617.18).

For only one reportable event specifically listed in section 4043-failure to meet ERISA's minimum funding standards (section 4043(b)(8))—is a 30-day notice always required. In addition, the three new reportable events, which are drafted to avoid unnecessary reporting, are all required to be reported within 30 days.

In summary, this final regulation is substantially simpler and contains fewer reporting requirements than the proposed regulation. The rest of this preamble is primarily devoted to a discussion of the many public comments on the proposed rule.

#### Definitions

*"Plan"*—The proposed regulation defined a "plan" for purposes of applying the reportable events rules as "one plan (whether it be a single employer, multiemployer or multiple employer plan), as opposed to a number of plans, only if, on a going concern basis, all of the plan assets are available to pay all participants' benefit entitlements". The PBGC has made some technical revisions in this definition in order to conform the definition to the IRS definition of "single

[1] Legislation to revise the termination insurance program for multiemployer plans is currently pending in Congress. The enactment of multiemployer legislation may necessitate amendments to this regulation.

plan" in Treas. Reg. § 1.414(1)-1(b)(1) (44 FR 48191, August 17, 1979). The definition of "plan" in this reportable events regulation now reads as follows: "'Plan' means a single plan (whether it be a single employer, multiemployer or multiple employer plan), as opposed to a number of plans, if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries."

The definition of "plan" in the present regulation, while limited by its terms to this part only, is the same definition that PBGC will be applying for all purposes under Title IV where it is necessary to determine whether an arrangement involves one plan or more than one plan.[2]

*"Active participant"*—One comment suggested that the definition of "active participant" should be the same for both single employer plans and plans to which more than one employer contributes, because the Act does not specifically distinguish between these two types of plans. The PBGC disagrees. The purpose of § 2617.14 (relating to active participant reductions) is to identify plans experiencing significant declines in covered employment, because such declines may indicate employer economic problems. The definition of "active participant" is critical to this event. While in single employer plans it is possible to relate the definition of active participant, and thus the event, generally, to declines in employment, it would be costly and burdensome to do so in a plan to which more than one employer contributes. Therefore, because of the different characteristics of these two types of plans, two different definitions of "active participant" are appropriate and are consistent with the purpose of section 4043. The final rule, like the proposed rule, defines "active participant" differently for a single employer plan than for a plan to which more than one employer contributes.

The PBGC has not adopted the definition of "active participant" used for purposes of the Form 5500, which is based on when a participant suffers a break in service. As discussed above, the PBGC believes that the definition of "active participant" with respect to a single employer plan should be designed to identify declines in employment. Because of Form 5500 definition is inadequate to identify declines in employment, it is inappropriate.

In response to another comment, the PBGC has revised the definition of "active participant" in the case of a plan to which more than one employer contributes, to provide that "active participant" does not include: (1) retired individuals, and (2) a former employee of a contributing sponsor, who has incurred a break in service.

*"Participant"*—One comment requested clarification as to whether the definition of "participant" includes employees who have not completed participation requirements under the terms of a plan. The same comment also asked whether a participant who suffers a break in service and is no longer a participant under the plan is treated as a participant under the regulation immediately upon being reemployed. The PBGC has made some technical changes in the definition to clarify that: (1) an employee who has not yet completed participation requirements under the terms of a plan is not a "participant" under Part 2617, and (2) a non-vested former employee who has incurred a break in service is a participant only if he or she has become a participant under the terms of a plan by subsequently overcoming the break in service in accordance with plan rules.

Another comment objected to the "participant" definition because it includes non-vested laid-off employees who have not incurred a break in service of one year. The comment stated that it is contrary to traditional personnel practices to say that once an individual is a participant, he or she retains that status for at least 12 months after his or her termination of employment date. Further, it suggested the problem is magnified if no waiting period is required for participation or the industry covered by the plan has a high turnover rate. The PBGC disagrees with this comment. This part of the definition is consistent with the "participant" definition used for other purposes under the Act (*e.g.*, annual reporting). It is also consistent with the definition in Title I, because such an individual "may become eligible to receive a benefit of any type from an employee benefit plan * * *" Act, section 3(7).

One comment objected that the definition excludes individuals to whom an insurance company has made an irrevocable commitment. The PBGC has determined that the requested change in this regulation should not be made. The definition of "participant" is to be used for purposes of reporting requirements only and does not represent a decision as to the applicability of this definition with respect to the substantive provisions in Title IV (*e.g.*, section 4045).

The same comment also stated the regulation includes a post-funding rider as an irrevocable commitment, thus excluding a former employee with an annuity with a post-funding rider from the definition of "participant". An insurance contract may contain a post-funding rider under which the insurer agrees to pay full benefits to a retired participant while that participant's irrevocable commitment is being purchased in installments after the participant's retirement. Only that portion of the retiree's annuity that has been purchased from the insurer is irrevocable. Thus, a former employee with an insurance contract with a post-funding rider where only a portion of the benefits to which he or she is entitled under the plan is subject to an irrevocable commitment is still a "participant". The definition has been revised to clarify that a former employee or a retiree is not a "participant" for purposes of this regulation only if an irrevocable commitment has been made by the insurer to pay *all* the benefits to which he or she is entitled.

*"Employer"*—One comment objected to the PBGC defining "employer" in Part 2617 to include all trades or businesses under common control (with the trade or business maintaining the plan) and urged that no final regulation be issued until the courts decide whether the PBGC definition is correct. The PBGC has rejected this comment. The PBGC interprets the definition of "employer" in section 4001(b) of the Act to include all trades or businesses under common control. It is appropriate for the definition of "employer" in § 2617.2 to be the same as that in section 4001(b). The PBGC's interpretation has been

[2] The PBGC has previously issued opinion letters, relating to the question of what constitutes a single plan for purposes of determining whether there has been a plan termination. These letters contain a detailed explanation of how the definition of "plan" will be applied to distinguish between a single plan and an aggregate of single plans. The following is the analytic framework set forth in these letters:

Our determination as to the nature of an entity—whether it is a single plan or an aggregate of single plans—is based on its structure and how it actually operates on an ongoing basis. We look to the documents governing the entity and to relevant evidence of how it has operated and continues to operate. Such evidence may include the reasonable expectations and intent of the parties.

The availability of funds held by an entity to provide benefits on an ongoing basis is a central factor in our analysis. Ongoing restrictions on the use of such funds indicate that the entity may be an aggregate of single plans. For example, an asset account might be maintained for each contributing employer. An employer's account might be credited with its contributions and allocable share of investment losses. It may be possible to restrict use of assets from each such account to pay only the benefits of the employee-participants of the employer maintaining the account. If the evidence shows that payments are effectively restricted, by whatever means, so that there is a minimal risk of funds attributable to the contributions of one employer being used to pay the benefits of another employer's employee-participants, then the entity is an aggregate of single plans.

affirmed by a United States District Court in the context of an employer liability action. *Pension Benefit Guaranty Corporation* v. *Ouimet Corporation*, 470 F. Supp. 945 (D. Mass. 1979).

Two comments suggested that the definition of "employer" needed clarification because the definition, as proposed, appears to cover only a trade or business under common control that maintains a plan. In response to these comments, the definition has been revised. The definition now reads: " 'Employer' means the trade or business (whether or not incorporated) maintaining the plan and all trades or businesses (whether or not incorporated) under common control, within the meaning of Part 2612 of this chapter, with such trade or business."

*"Single employer plan"*—In response to one comment suggesting a technical revision, this definition has been revised to read: " 'Single employer plan' means a plan maintained by one trade or business (whether or not incorporated) or by two or more trades or businesses (whether or not incorporated) all of which are under common control within the meaning of Part 2612 of this chapter."

*"Money purchase plan"*—After consideration of two comments suggesting technical revisions, this definition has been revised to read: " 'Money purchase plan' means an individual account plan, as defined in section 3(34) of the Act, other than a profit-sharing plan or a stock bonus plan, in which the employer's contributions are fixed or determinable."

*"Normal retirement benefit"*—One comment objected to the definition in the proposed regulation on the grounds that "normal retirement benefit" is adequately defined in the Act and need not be re-defined. In response, the PBGC has revised the definition to incorporate by reference the definition of normal retirement benefit in the vesting rules in Code section 411(a)(9) and Treas. Reg. § 1.411(a)-7(c).

*"Retirement benefit"*—The proposed rule defined a "retirement benefit" as "a benefit payable upon normal, early or disability retirement, other than a welfare benefit described in section 3(1) of the Act, to a *participant* who leaves or has left covered employment." (Emphasis added.) One comment suggested that the definition be modified to include former employees with vested rights. This change is unnecessary because the definition of "participant" for purposes of this regulation includes former employees with vested rights (other than former employees to whom an irrevocable commitment has been made) and such employees have a benefit payable upon normal retirement.

The PBGC has revised the definition to include a benefit payable upon late retirement. This change is discussed below in connection with the reportable event relating to an amendment decreasing benefits payable.

*"Contributing sponsor"*—A new definition has been added. The term "contributing sponsor" is defined as "each trade or business that is obligated to contribute to the plan, whether or not a funding waiver or variance has been granted by the Secretary of Treasury." This term is discussed below in connection with the three new reportable events.

*"Insurance contract"* and *"post-funding rider"*—The proposed regulation defined these two terms because these terms were used in the reportable event relating to an inability to pay benefits when due. The definitions of these terms have been deleted because these terms are no longer used in this event in the final regulation.

**Reporting Requirements**

*Requirement of notice*—A number of comments objected to the amount of information required to be filed with a 30-day notice (proposed § 2617.3(c)). Many comments objected to the administrative expense and burden that would be involved in providing the required information. Some comments suggested specific limited documentation that should be required (*e.g.*, one comment suggested filing a description of the event, a copy of the plan, and the most recent annual report). Others suggested that the plan administrator submit only "pertinent" documentation. One comment urged that relevant information be required with the annual report only. Still another requested that no information be required; rather, the regulation should identify the kinds of additional information generally needed for the PBGC to analyze the danger of termination and, then, based on its review of the facts in a particular case, the PBGC could require such information (or other information) to be submitted later, if needed. The same comment also requested an explanation of why each document is requested.

After consideration of these comments, the PBGC has decided to eliminate most of the information items listed in proposed § 2617.3(c). However, because the PBGC has decided not to prescribe, at this time, a form on which a 30-day notice would be filed, the PBGC has added to the list of general information required in a 30-day notice some information that previously was included on the proposed form. In addition, the PBGC has added one other item—a brief statement of the pertinent facts relating to the reportable event.

The final regulation requires that a 30-day notice include: (1) the name of the plan; (2) the name, address, and telephone number of the plan sponsor(s); (3) the name, address, and telephone number of the plan administrator; (4) the identification number assigned to the plan sponsor (EIN) and the plan (PIN); (5) a brief statement of the pertinent facts relating to the reportable event; (6) a copy of the current plan document; (7) a copy of the most recent actuarial statement and opinion; (8) a statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion relating to the plan; and (9) a copy of the most recent IRS determination letter (§ 2617.3(b)). The PBGC believes that the information required to be submitted in a 30-day notice under the final regulation does not impose an undue burden on a plan administrator and is the minimum necessary for the corporation to review a notice on a timely basis. The PBGC may, of course, request additional information based on the facts and circumstances of each case.

One comment requested clarification as to whether the information to be filed should be current as of the date the 30-day notice is mailed or the date the reportable event occurred. The PBGC has revised the regulation (§ 2617.3(b)) to indicate that the above nine information items required to be filed in the notice should be as current as practical as of the date the 30-day notice is mailed. (As a practical matter, though, it is expected that there will be few situations in which there is a material difference between the information as of the date of the event and information as of the mailing date.)

Section 2617.3(c) sets forth additional information that must be provided for certain events. The additional information required in § 2617.3(c) is basically the same as the information required in § 2617.3(d) of the proposed regulation. The PBGC has revised the additional information required, as follows: (1) for an event described in § 2617.13(a) (relating to a decrease in benefits payable), to eliminate the requirement to file any additional information; (2) for an event described in § 2617.16(a) (relating to a minimum funding violation), to include financial information relating to the plan sponsor; (3) for an event described in § 2617.17(a) (relating to an inability to pay benefits

when due), to include more specific information concerning the failure to pay benefits and the possibility that failure will continue; (4) for an event described in § 2617.18(a) (relating to a distribution to a substantial owner) to eliminate the requirement to include information concerning nonforfeitable benefits which are not funded; and (5) for an event described in § 2617.23(a) (relating to a transaction involving a change of employer) to include financial information relating to each member of the plan sponsor's controlled group before and after the transaction and to eliminate the requirement to include information concerning nonforfeitable benefits which are not funded.

Finally, one comment requested that the PBGC provide in the regulation that when a plan administrator believes that a particular reportable event notice need not contain all of the information required under § 2617.3, the plan administrator may request that the PBGC waive the filing of certain information. The PBGC believes that in almost all cases the information required to be filed will be necessary to the processing of the case by the PBGC. The PBGC also believes that the submission of the information required under §2617.3 will not impose an unreasonable burden on a plan administrator. Accordingly, no formal procedure for a plan administrator to request a waiver is being adopted. In addition, proposed § 2617.3(f), relating to waiver of the obligation to file, has been deleted.

*Reporting events on annual report*—The proposed rule provided that even if the plan administrator's obligation to file a 30-day notice is waived, the plan administrator is still required to report the occurrence of the event on the plan's annual report (proposed § 2617.3(a)(2)). One comment suggested that the PBGC eliminate from the annual report any event for which the 30-day notice is waived, other than those events for which notice will be provided to the PBGC by the DOL or the IRS. The PBGC is not empowered to relieve a plan administrator from the statutory obligation to include reportable events in the annual report. The PBGC has added a separate section (§ 2617.4) to clarify that a reportable event must be reported in the plan's annual report whether or not the 30-day notice requirement has been waived.

*Date of filing*—Under the proposal, a document was deemed filed with the PBGC on the date of receipt by the PBGC. Some comments objected to this provision, arguing that because the proposal would significantly reduce the 30-day period, and would unfairly result in a violation of Title IV if a notice is lost in the mail, the date of filing should be considered the date of the United States postmark stamped on the envelope. The PBGC agrees with this suggestion and has made the necessary change (§ 2617.6). It should be noted, however, that the date of the postmark will be considered the date of filing only if the postmark is made by the United States Postal Service and only if the document is mailed postage prepaid, properly packaged and addressed. If the above conditions are not met, the date of filing is the date the PBGC receives the document.

Specific Reportable Events

*Title I noncompliance*—One comment objected to the requirement in proposed section 2617.4 that any violation of Title I be reported in the annual report and requested that the PBGC interpret the phrase "not in compliance with Title I of the Act" in section 4043(b)(1) as covering only those parts of Title I that correspond to the tax qualification requirements of Code section 401(a). This comment contended that: (1) this event could include many situations that are not indicative of plan or employer financial problems or possible need for plan termination, and (2) the events in section 4043(b)(1) (Title I noncompliance and tax disqualification) are only intended to relate to tax disqualification. The PBGC has rejected this comment because the suggested construction of section 4043(b)(1) is unsupported by the statutory language. In addition, the PBGC notes that in section 4043(b)(8), the only other paragraph in section 4043(b) with two discrete events, the two events are unrelated. Section 4043(b)(8) includes both plan mergers, consolidation or transfers and an alternative method of compliance with the reporting and disclosure requirements under Title I.

*Amendment decreasing benefits payable*—Under the proposed regulation, a reportable event occurs when an amendment to a plan is adopted if, under the amendment, any participant's retirement benefit may be decreased (proposed § 2617.5). The final regulation provides that a reportable event occurs only if the decrease is in a benefit payable from employer contributions (§ 2617.13).

Several comments objected to the PBGC treating as a reportable event the adoption of an amendment if, under the amendment, there is "a decrease or *potential decrease* in the amount of any accrued retirement benefit or *the retirement benefit that would accrue in the future*" (emphasis added). Some comments suggested that this event be limited to reductions in accrued benefits (*i.e.* benefits payable as of the date an amendment is adopted). One such comment stated that the proposed regulation requires reporting of changes that do not portend plan termination. Another comment urged that this event only apply to the elimination of any type of retirement benefit and an increase in age, service or other requirements for benefit entitlement.

The PBGC believes that treating a decrease or a potential decrease in accrued benefits or future accruals as a reportable event is consistent with the language in section 4043(b)(2) and the purpose of section 4043. Section 4043(b)(2) applies to the adoption of an amendment to a plan under which "the *benefit payable * * * may be decreased*" (emphasis added). It is significant that Congress used the term "benefit payable" in section 4043(b)(2), not accrued benefit. The term "accrued benefit" found in section 204(g) of the Act and section 411(d)(6) of the Code, both of which relate to reductions in accrued benefits, does not apply to benefits that might accrue in the future. The use of the term "benefit payable" in section 4043(b)(2), a broader term, indicates a legislative intent that section 4043(b)(2) apply in circumstances other than or in addition to the reduction of accrued benefits, *e.g.*, prospective reductions in benefits. This is consistent with the purpose of section 4043, since a prospective reduction or benefits may be as indicative of the need for the PBGC to scrutinize a plan as a reduction in accrued benefits. In addition, the reference to a "potential decrease" in section 2617.13 reflects the use of the term "may be decreased" in section 4043(b)(2), which seems to evidence Congressional intent to widen the application of this reportable event to cover a plan amendment that creates the possibility of a prospective reduction in benefits, as well as an amendment that results in an actual reduction.

A number of comments objected to the PBGC treating as a reportable event the adoption of an amendment designed to integrate a plan's benefit formula with Social Security benefits or to increase the level of integration. Other comments requested the PBGC to waive the 30-day notice requirement for such situations. The PBGC has decided that such amendments are reportable events as described in section 4043 since they may result in a reduction in the benefit payable. However, the PBGC has added a special rule in the waiver provisions in section 2617.13 to waive the 30-day reporting requirement for an amendment

under which: (1) the plan becomes integrated with Social Security benefits, (2) the level of integration is increased, or (3) the method of integration is changed. The same rules would apply in the case of Railroad Retirement benefits. The PBGC also has included a definition of "Social Security benefits" and "Railroad Retirement benefits" in section 2617.2.

A few comments raised questions about the interpretation of the term "potential decrease". One comment requested that the PBGC limit the application of "potential decrease" to specifically enumerated situations, because this term may cover so many possible events. The PBGC recognizes that the term "potential decreases" may apply to many situations, such as those described in the next two paragraphs, but it does not believe it is necessary or prudent to attempt to enumerate these situations in the regulation.

Another comment asked whether a reportable event occurs upon the adoption of a plan amendment that is not intended to decrease benefits but "may occasionally have that effect on some individuals", such as the result of a change in the benefit formula from a career earnings plan to a final average salary with a lower percentage formula. Another comment noted that many amendments change the benefit formula from career average to final pay. While these amendments are intended to increase benefits for most participants, they may adversely affect a few participants because, for example, a participant's compensation is subsequently reduced. In response to these comments, the final regulation provides in § 2617.13(d)(2) that projected benefits, and therefore potential benefit increases or decreases, should be determined based upon the salary scale used in the plan's actuarial assumptions. For this purpose, the plan should assume that each participant's salary will increase until normal retirement age in accordance with the salary scale used by the plan's actuary. If the plan changes from a career average to a final pay benefit formula and uses a salary scale to project future benefits levels that has salary increasing up to normal retirement age, but retains the same percentage benefit formula, there is no reportable event because the new formula would always provide a higher benefit under the assumptions used. However, if the percentage formula is reduced, it will be necessary to project the benefits of participants at various ages to determine whether their benefits would be lower under the new formula than under the old formula.

One comment requested that the final regulation provide that no reportable event occurs if a plan amendment provides for a minimum benefit based on a continuation of the old benefit formula at the participant's wage level as of the date of the change. Because such an amendment may result in a decrease in the benefits payable, under the final regulation, as under the proposal, this is a reportable event.

One comment requested the PBGC to clarify in the final regulation whether a reduction in option factors or early retirement factors resulting from a change in actuarial assumptions is a reportable event. Another comment objected to the PBGC treating as a reportable event a change in the actuarial factors underlying an early retirement benefit calculation, arguing that this is unduly burdensome and not within the scope of ERISA. Under the final regulation, as in the proposed regulation, a change in the actuarial factors used to compute optional forms of payment of a retirement benefit is not a reportable event. A change in the actuarial factors used to compute early retirement benefits that may result in a lower normal form of payment at any age is a reportable event. These results follow from the language of § 2617.13. Furthermore, the PBGC believes that these results are consistent with section 4043(b)(2) of ERISA and the purpose of section 4043, as discussed above. In addition, since the plan administrator's obligation is only to report such events in the plan's annual report (*i.e.*, there is no 30-day notice requirement), there is not an undue burden on the plan administrator.

One comment suggested that the regulation provide that a reportable event has not occurred where a decrease in a participant's anticipated benefit under a plan is offset by an increase in the participant's anticipated benefit under another plan maintained by a trade or business within the same controlled group. The PBGC has rejected this suggestion because, under section 4043, the occurrence of a reportable event is determined on a plan-by-plan basis. Thus, section 4043(b)(2) provides that a reportable event occurs "when an amendment of the plan is adopted if, *under the amendment, the benefit payable* with respect to any participant may be decreased" (emphasis added). However, the 30-day notice for this event is waived when there is an offsetting benefit increase in another plan covering the same participants that is maintained by a member of the same controlled group.

By modifying the definition of "retirement benefit", the PBGC has revised this event to include a decrease or potential decrease in a benefit payable upon late retirement.

The PBGC has revised the 30-day notice requirement with respect to this event. Under the final regulation, the 30-day notice requirement is waived unless the following three conditions exist. First, the plan has 100 or more participants as of the end of the previous plan year. This represents a change in the date as of which the number of participants should be determined; under the proposal, the determination date was the date of adoption of the amendment. This change is designed to minimize the burden imposed on the plan administrator by enabling the plan administrator to count participants as of the same date for purposes of both the annual report and this reportable event. Second, the amendment results in: (a) a decrease in the already accrued normal retirement benefit of any participant; or (b) a decrease of more than 50 percent in the amount of the normal retirement benefit that would accrue in the future with respect to more than 50 percent of the number of active participants in the plan as of the end of the previous plan year. The test in the proposed rule related to a 10 percent decrease in the normal retirement benefit for more than 10 percent of the participants. That test has been eliminated because of the administrative difficulty involved in applying that test. The new 30-day notice requirement focuses specifically on only those classes of events for which the PBGC has determined a 30-day notice is essential. Third, the amendment is not adopted in order to comply with the requirements of any federal law (*e.g.*, the Internal Revenue Code). The proposed regulation referred only to amendments not adopted in order to avoid or to correct discrimination prohibited under the Code. The PBGC has revised the third test in recognition of the fact that the adoption of an amendment to comply with other Code provisions or other federal law does not normally indicate a plan in danger of termination, even if the amendment may result in a decrease or potential decrease in a benefit payable to any participant.

One comment suggested that since this event must be reported on the annual report, the PBGC should consider whether it needs earlier notification. The PBGC believes that a decrease in benefits payable is one of the most significant reportable events because it is very likely to be indicative of

employer financial hardship or a danger of plan termination. To delay reporting of a benefit decrease for as long as one and one-half years after the decrease could have an adverse impact on participants and the PBGC. Accordingly, it would be inappropriate to waive entirely the 30-day notice requirement for this event and rely exclusively on annual reports.

The same comment also requested that the PBGC consider waiving the 30-day notice requirement where a plan is amended to increase the vesting requirements for entitlement to a normal retirement benefit. The PBGC has rejected this suggestion because such an increase may well be indicative of a plan in danger of termination.

One comment suggested that in the case of a collectively bargained plan, there should be a waiver of the 30-day notice requirement for amendments that do not curtail benefits during the term of the bargaining agreement but which might reduce future benefit accruals for many participants. The comment stated that there should be a waiver because it is likely in a collectively bargained plan that the flat dollar benefit amount will be increased in future negotiations. The same comment also urged that the 30-day notice requirement for the event be waived unless there is a "material reduction" in the retirement benefit of all participants. As noted above, PBGC has, in this final rule, expanded the waiver provisions for this event. The PBGC believes that it would be inappropriate to expand the waiver further for collectively bargained plans.

Finally, one comment stated that the reference to "normal retirement age" in proposed § 2617.5(c)(1) in the special computation rules for computing the amount of a decrease in the amount of the normal retirement benefit for purposes of the waiver provisions is confusing because the Act defines that term in section 3(24) without regard to the age at which full accrued benefits are payable. The comment suggested that the 30-day notice requirement should be written without reference to "normal retirement age". The final regulation (§ 2617.13(d)(1)) uses the age at which the normal retirement benefit is payable instead of the "normal retirement age" for purposes of comparing benefits before and after a plan amendment that changes the age at which the benefit is payable.

*Active participant reduction*—Several comments requested the PBGC to authorize a plan administrator to use annual census participation data to determine whether a reportable event has resulted from a decrease in the number of active participants. These comments suggested the use of year-end participation data since that data is already being compiled for purposes of other reporting requirements under the Act. One comment stated that it would impose "an unreasonable and costly administrative burden upon administrators to constantly monitor the [number of] active participants" Another comment stated that for multiemployer and multiple employer plans employment is often irregular and whether an idividual is a participant can generally be determined only when the plan records are available for a plan year.

The PBGC has decided against specifically authorizing in the final regulation the use of annual participant data. The PBGC believes that this event does not require daily monitoring of the number of active participants. A plan administrator's obligation is merely to report an active participant reduction when the plan administrator knows or has reason to know about the occurrence of an active participant reduction. There is no violation of Title IV if, for any reason (e.g., plan records are compiled on a yearly basis), the plan administrator does not know or has no reason to know of any active participant reduction that is a reportable event. (It is not the intention of the PBGC to require a change in current reasonable record keeping methods in order to comply with this event.) On the other hand, there will be situations where the plan administrator should know of the occurrence of a reportable event without regard to when plan records are updated. For example, if 40 percent of the employees under a single employer plan are separated from employment, the PBGC would expect that plan administrator should not be relieved of his or her reporting obligations in all situations simply because plan records are compiled on a yearly basis.

A related question is what should be the base point in time for determining the number of active participants in order to be able to measure the percentage decrease, if any, in the number of active participants during the plan year? The PBGC has added a special rule for this event under which a plan administrator need not determine the number of active participants as of the beginning of a plan year, if, instead, he or she determines the number as of the end of the preceding year (§ 2617.14(c)). The PBGC believes that the number of active participants as of the beginning of a plan year should not be significantly different from the number as of the end of the previous plan year. Further, the special rule will enable a plan administrator to avoid establishing a new system of records for purposes of determining the number of active participants as of the beginning of the plan year and, instead, to use information that is required to be reported by plans for other purposes under the Act.

One comment suggested that the PBGC consider whether it needs to be notified of an active participant reduction before it receives a plan's annual report. The comment asked why, in the proposed regulation, the PBGC waived the 30-day notice requirement for an IRS determination of a partial termination, which usually means a 20 percent decrease in plan participation, but not for an active participant reduction. The PBGC believes that an active participant reduction is highly indicative of plan or employer financial problems. Delaying reporting of this event for as long as one and one-half years could have a serious adverse impact on the participants, and the PBGC. In the case of an IRS determination of a partial termination, the PBGC has waived the 30-day notice requirment because the IRS is required to notify the PBGC when it makes such a determination. However, a partial termination does not automatically occur when there is a 20 percent decrease in plan participation. Accordingly, the significance of a decline in participation makes it important that the PBGC receive notice from the plan administrator of an active participant reduction as soon as possible.

Several comments requested the PBGC to clarify the active participant reduction waiver provision. One comment expressed confusion about whether one or both of the tests in proposed § 2617.6(b) needed to be satisfied in order to qualify for a waiver of the 30-day notice requirement. Another comment stated that the regulation was unclear whether in applying the second test (relating to aggregating the total number of active participants in all the employer's covered plans) a plan administrator could include active participants in the employer's defined contribution plans.

The PBGC has revised the waiver provision to clarify two points. First, the waiver provision is applicable if there are less than 100 participants in the plan or there is an insignificant reduction in the total number or active participants in all of the employer's covered plans. Second, for purposes of the second test, the plan administrator may take into account only the total number of active participants in all of the employer's

single employer defined benefit plans covered under Title IV.

The PBGC notes that the final regulation, like the proposed regulation, provides that the 30-day notice requirement is not waived if the plan has 100 or more participants as of the beginning of the current or previous plan year. The beginning of the plan year is used because this reportable event uses the beginning of the plan year as the base point in time for determining the number of active participants in order to be able to measure the percentage decrease. However, the plan administrator may determine the number of participants as of the end of the two immediately preceding plan years (§ 2617.14(c)).

*Failure to meet minimum funding standards*—One comment suggested that the PBGC waive the 30-day notice requirement for this event, because a minimum funding violation does not necessarily mean a plan is in trouble and "this information would be discovered at the time of the normal actuarial report." The PBGC has rejected this suggestion because the occurrence of this event may indicate serious plan and employer financial problems and thus requires a PBGC review of the facts and circumstances as soon as possible; a delay in notification of this event may have a serious adverse impact on the PBGC and participants.

Two comments suggested that the PBGC waive the 30-day notice requirement in situations where the period for making a contribution to the funding standard account is extended beyond the due date for the annual report, since the PBGC will receive notice of the occurrence of this event when it receives a copy of the annual report from the IRS. The PBGC has rejected this comment. A contribution for a plan year must be made within two and one-half months after the close of the plan year, or an extended period of up to eight and one-half months under regulations prescribed by the Secretary of the Treasury. The Secretary of the Treasury has issued regulations automatically extending the period during which contributions must be made for a plan year to eight and one-half months after the close of the plan year—more than a month later than the annual report deadline. See Treas. Reg. § 11.412(c)-12(b). As long as the deadline for contributions is later than that for reporting, it will be impossible to determine delinquencies in contributions in time for the annual report. Therefore, the PBGC has determined that it is necessary to maintain the 30-day reporting requirement.

*Inability to pay benefits when due*—Under the proposed regulation, a reportable event occurs when a plan is unable to pay full promised benefits when due in the form prescribed by the plan. Special rules are included for determining when a plan is unable to provide full promised benefits depending on the form in which benefits are provided (proposed § 2617.9(b)). Administrative delays or difficulties caused by, for example, the absence for fewer than two full benefit payment periods of the person authorized to make or approve benefit payments, or the need to verify participants' eligibility to receive benefits, do not result in a plan being considered unable to pay full promised benefits when due.

The final regulation has been revised to provide that a plan is unable to pay benefits when due if the plan does not pay any participant, who is then entitled to benefit payments, the full promised benefits to which he or she is entitled in the form prescribed under the terms of the plan (§ 2617.7(a)). For example, a plan is unable to pay benefits when due if an insurer from which the plan has purchased a group insurance contract that contains a post-funding rider does not pay a participant his or her benefit in the form prescribed under the terms of the plan.

Except for a substantive change with respect to proposed § 2613.3(b) (relating to a group insurance contract that contains a post-funding rider), the special rules in proposed § 2617.9(b) (relating to the form in which benefits are provided) have been dropped for editorial reasons. Similarly, the regulation no longer specifically provides that this event will generally occur when a plan currently has inadequate assets to pay full promised benefits as they come due, or when full promised benefits are not paid because of asset liquidity problems (proposed § 2617.9(a)). This too was dropped for editorial reasons. Such changes were made because they did not add anything to the general rule in § 2617.17(a). Further, the rule relating to administrative delays has been revised to provide that a plan shall not be treated as being unable to pay benefits when due if its failure to pay benefits is caused solely by: (1) the need to verify any participant's eligibility for benefits, (2) inability to locate any participant, or (3) any other administrative delay if such delay lasts less than the shorter of two months or two full benefit payment periods.

One comment suggested that the regulation provide that a plan is not unable to pay benefits when due merely because plan assets are currently inadequate to pay all benefits due at a future date. The PBGC believes that the interpretation of section 4043(b)(6) stated in the comment is correct and that this interpretation is now clear under § 2617.17(a), as revised.

The inability of a plan to pay benefits when due is one of the statutory bases for action under section 4042 of the Act. The PBGC notes that its interpretation of when it is authorized to initiate involuntary termination proceedings under section 4042(a)(2) need not coincide with its interpretation as set forth in § 2617.17 of when a reportable event occurs under section 4043(b)(6).

*Distribution to a substantial owner*—Under the proposed rule, a 30-day notice for this event is required only when there has been a distribution or distributions with a value of $10,000 or more to a substantial owner within a 12-month period, all or a portion of which is attributable to a benefit which is in excess of the maximum guaranteeable benefit for substantial owners under Part 2609 of this chapter for the year in which it is made (proposed § 2617.11(b)). One comment suggested that the 30-day notice requirement in the case of a distribution to a substantial owner be waived entirely for plans with fewer than 100 participants since (1) the administrative cost of determining the value of a distribution at irregular intervals during the year would impact most severely on smaller plans, (2) the notification requirement is more sweeping where an annuity contract is the vehicle for retirement benefits than in a non-insured fund because of the rules for valuing irrevocable commitments, and (3) the recapture provisions of section 4045 adequately protect the PBGC.

The PBGC has rejected this suggestion for several reasons. First, the PBGC believes that the 30-day notice requirement will apply in very few situations, but when it does it will most likely involve a small plan. A large distribution in a small plan is likely to have a serious impact on the plan. Second, failure to receive a 30-day notice will severely impair the PBGC's ability to apply the recapture provisions of section 4045 because notification on the annual report may not be timely. Third, the seriousness of the event described in this section is reflected in the fact that the occurrence of such an event authorizes the PBGC to initiate involuntary termination proceedings under section 4042(a)(3) of the Act. Accordingly, the interests of other plan participants and the PBGC outweigh the

rare instances in which significant administrative cost and inconvenience possibly might result from application of the 30-day notice requirement.

One comment suggested that in the rules for valuing a distribution in paragraph (c)(2), the words "to the participant and/or his beneficiary" be added after "benefit payable" in order to eliminate situations where the trust has power to retain the payments. The PBGC has rejected this comment because paragraph (c)(2) is intended to provide valuation rules for a distribution in the form of an irrevocable commitment, *i.e.*, an insurer's obligation to pay a participant or his or her beneficiary. Paragraph (c)(2) thus does not apply to situations where the trust has power to retain benefit payments.

The same comment suggested that the PBGC add the words "to a participant and/or beneficiaries," after "equivalent" in the rules for determining the date of a distribution of an irrevocable commitment in paragraph (d) in order to apply to the situation where a trustee purchases an insurance contract with payments to be made to or at the direction of the trustee. The PBGC has not accepted this suggestion because such a contract is not an "irrevocable commitment" as defined in § 2617.2.

*Plan merger, consolidation or transfer*—Under the proposal, the 30-day notice requirement is partially waived for this event. In general, under the proposed rule, a 30-day notice is required when a multiemployer plan (within the meaning of section 414(f) of the Code) merges or consolidates with or transfers (or receives) assets or liabilities to (or from) any other plan, or when a single employer plan with 100 or more participants merges or consolidates with or transfers assets or liabilities to a plan maintained by a different employer (*i.e.*, an employer who is not a member of the same group of trades or businesses under common control, within the meaning of part 2612 of this chapter) (proposed § 2617.11(a)). Proposed § 2617.11(b)(2) contains a special rule under which a 30-day notice need not be filed if there is a transfer of assets or liabilities pursuant to a reciprocity or portability agreement.

Some comments urged the PBGC to waive the 30-day notice requirement for all plan mergers, consolidations or transfers of assets or liabilities. One comment endorsed the proposed rule but suggested clarification of the provision relating to the merger of a single employer plan with a plan maintained by a different employer.

The PBGC has decided to waive the 30-day notice requirement for any reportable event under this section because the PBGC expects to receive information from the IRS concerning plan mergers, consolidations or transfers of assets or liabilities. (A plan administrator is required, pursuant to section 6058(b) of the Code, to file a notice with the IRS at least 30 days prior to the occurrence of the event.)[3]

*Alternative method of compliance*—In response to a comment, the PBGC has established a separate section for this event, § 2617.20. In response to another comment, the PBGC has revised the alternative method of compliance event to indicate that a reportable event occurs only if the Secretary of Labor prescribes an alternative method of compliance for a particular plan or a specific limited group of plans. The PBGC has made the latter change because certain reporting and disclosure forms filed by a class of plans or by all plans (*e.g.*, the 5500 series) are considered alternative methods of compliance under DOL regulations.

*Bankruptcy, insolvency or similar settlements; liquidation or dissolution.*—These two events apply to single employer plans only. One comment suggested that the PBGC expand the scope of these two events to apply to multiple employer and multiemployer plans, possibly with a 3 percent *de minimis* rule for administrative feasibility. The PBGC has not followed this suggestion because the PBGC believes that, in view of the number and size of the employers in many multiple or multiemployer plans, the bankruptcy or liquidation of one employer in such plans will rarely be indicative of a possible danger of termination. Moreover, in those cases where a major contributing employer is bankrupt or is liquidated or dissolved, the PBGC should be so advised in a timely manner either as a reportable event as a result of a reduction in active participants, or under § 4063 in connection with the plan administrator's notice of the withdrawal of a substantial employer.

Under the proposed regulation, a reportable event occurs when, in the case of a single employer plan maintained by a member of a group of trades or businesses under common control, any member of the group (whether or not contributing to the plan) is the subject of bankruptcy, insolvency or similar settlements or is in the process of being completely liquidated or dissolved. One comment objected to the requirement that a notice be filed for each plan in the controlled group. The comment recommended that the reporting obligation apply with respect to a plan only if there is a bankruptcy or liquidation of a trade or business that contributes to the plan or the parent corporation of such trade or business. The PBGC has revised both events to limit the events to situations where a contributing sponsor is the subject of bankruptcy, insolvency or similar settlements or is in the process of being completely liquidated or dissolved. The PBGC believes that where a bankruptcy or liquidation does not involve a contributing sponsor, the administrative burden imposed by the proposed events is unjustifiable when compared to the likely danger of, or need for, plan termination. That is, while bankruptcy or liquidation of a contributing sponsor indicates a significant danger or possible need for a plan termination, the bankruptcy or liquidation of a member of a contributing sponsor's controlled group is far less likely to indicate a danger of or the need for a plan termination.

In addition, the PBGC has revised the last subparagraph of the proposed bankruptcy event so that a reportable event occurs if a contributing sponsor undertakes to effect any other non-judicial composition, extension or settlement with *substantially all* its creditors.

*Transaction involving a change of employer*—Proposed § 2617.14(a) provides, generally, that a reportable event occurs when, with respect to a single employer plan with 100 or more participants and with nonforfeitable benefits which are not funded, there is a transaction involving the assets of or an ownership interest in the plan sponsor and, as a result, the plan sponsor is or will no longer be a member of the same commonly controlled group, or there is or will be a change of plan sponsor. Proposed § 2617.14(b) provides, in pertinent part, that this event does not cover a situation in which there is no change in the identity of the employer (as opposed to the plan sponsor), as defined in proposed § 2617.2.

As finalized herein, § 2617.23(a) applies only with respect to a single employer plan with nonforfeitable benefits which are not funded of $1 million or more. The substitution of $1 million threshold for the 100 or more participant test should further limit the scope of this event. The PBGC believes that few, if any, single employer plans with fewer than 100 participants are

[3] Appropriate changes will be made in the joint PBGC-IRS proposed procedure to eliminate duplicative filing requirements under §§ 4041(a) and 4043(b)(8) of the Act and §§ 401(a) and 6058(b) of the Code, as described in the PBGC's proposed revision of the Notice of Intent to Terminate regulation, published on July 24, 1979, at 44 FR 43404, so that the procedure would no longer apply to plan mergers, consolidations or transfers of plan assets or liabilities.

likely to have nonforfeitable benefits which are not funded of $1 million or more.

A reportable event occurs under the final regulation when:

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor—

(i) There is or will be a new contributing sponsor that is not a member of the controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another trade or business, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of the assets of or an ownership interest in another trade or business, the sponsor and that trade or business are no longer part of the same controlled group.

The reporting obligations under § 2617.23(a) apply with respect to a contributing sponsor's single employer plan. For example, assume that Corporation X owns 100 percent of the only class of Stock of Corporation Y. Corporation X maintains a single employer plan. Corporation Y maintains a separate single employer plan. Corporation X's plan and Corporation Y's plan each have nonforfeitable benefits which are not funded of $1 million or more. Corporation X sells all of its stock in Corporation Y to Corporation Z, an unrelated company. There is a reportable event with respect to Corporation X's plan (§ 2617.23(a)(2)) and a reportable event with respect to Corporation Y's plan (§ 2617.23(a)(1)).

This event, as modified, and §§ 2617.21 and .22, refer to the term "contributing sponsor." The relationship of the terms contributing sponsor, "employer", and "controlled group", is as follows: Each trade or business that is obligated to contribute to a plan is a "contributing sponsor." There may be more than one contributing sponsor even with respect to a single employer plan. For example in the case of a plan to which six members of the same controlled group contribute, each member is a contributing sponsor; however, there is one "employer" with respect to the plan for purposes of Title IV. The "employer" is the trade(s) or business(es) obligated to contribute to the plan plus all trades or businesses under common control with such trade(s) or business(es), whether or not they are contributing sponsors with respect to the plan. That is, the "employer" is a group of trades or businesses under common control, including at least one contributing sponsor. A contributing sponsor and all trades or businesses under common control with it form a "controlled group." If there are no trades or businesses under common control with the contributing sponsor, the contributing sponsor and the "controlled group" are the same.

The purpose of this event is to require a plan administrator to notify the PBGC of transactions that have resulted or will result in a change in the make-up of the employer that would be liable to the PBGC if the plan then terminated immediately after the transaction. These rules reflect the fact that employer liability to the PBGC is limited by 30 percent of the employer's net worth.

A transaction may be a reportable event under both § 2617.23(a)(1) (ii) and (iii). For example, assume that Corporations A, B, and C are members of a controlled group, that A is the contributing sponsor, and that the plan has nonforfeitable benefits which are not funded of $1 million or more. Individual X buys 100 percent of the stock of Corporation A. This transaction is a reportable event under § 2617.23(a)(1) (ii) and (iii).

Section 2617.23(a)(1)(iii) contains an exemption for a transaction involving a transfer of assets of or an ownership interest in the contributing sponsor where the contributing sponsor becomes a member of a different controlled group if the new controlled group is or will be the same, but for the addition of another trade or business, as the contributing sponsor's controlled group before the transaction. For example, no reportable event occurs under § 2617.23(a)(1)(iii) if assets of the contributing sponsor are transferred to another trade or business in exchange for stock in that transferee trade or business and as a result of this transaction the contributing sponsor and the transferee trade or business are now part of the same controlled group.

The following examples are illustrative of reportable events under this section. For purpose of these examples, assume that A, B, and C are members of a controlled group, that A is the contributing sponsor, and that the plan has nonforfeitable benefits which are not funded of $1 million or more.

1. A buys back all of its stock held by B and C (§ 2617.23(a)(1)).

2. A and D, an unrelated company, are consolidated into a new company E, which is not a member of the controlled group of which A was a member and which becomes the contributing sponsor (§ 2617.23(a)(1)).

3. A sells all its stock in C to D, an unrelated company. (§ 2617.23(a)(2)).

In the next example of a reportable event under § 2617.23, assume that A is the sole member of a controlled group and that a division of A maintains a plan:

4. A sells that division that maintains the plan to B, an unrelated third party, who incorporates the division (§ 2617.23(a)(1)).

Finally, assume that A is the sole member of a controlled group and A maintains a plan:

5. A sells all its stock to B, an unrelated company, which is a member of a controlled group including companies C and D (§ 2617.23(a)(1)).

Section 2617.23(a) does not apply to all transactions where there is a change in the contributing sponsor's controlled group. For example, A maintains a single employer plan with nonforfeitable benefits that are not funded of $1 million. B owns 90 percent of the stock in A and 85 percent of the stock in C. B executes an agreement to sell all of its stock in C to an unrelated company. In this case, § 2617.23(a) does not apply, because the transaction does not involve a change in the controlling ownership interest in A, nor in A's controlling ownership interest in another trade or business.

In addition, § 2617.23(a) does not apply to reorganizations that involve a mere change in name, location or organization, however effected, liquidation into a parent corporation, or a merger, consolidation or division involving only members of the same controlled group. These exceptions are intended to exclude events that do not have an impact on the net worth of the employer liable to the PBGC in the event of plan termination. For example, assume A is the contributing sponsor to a single employer plan and A, B, and C are members of a controlled group. A, B, and C are consolidated into a single company. This would not be a reportable event.

For purposes of this reportable event, the term "transaction" includes but is not limited to a legally binding agreement, whether or not written, to transfer, or a transfer, and a change of ownership that occurs as a matter of law or exercise or lapse of pre-existing rights. For example, a reportable event occurs upon the execution of an agreement to sell the assets of a facility to an unrelated employer and to transfer plan sponsorship to that employer. In the absence of a preliminary sales agreement, the reportable event occurs upon the consummation of the sale.

The PBGC has also revised this event by: (1) including valuation rules for determining whether a plan has nonforfeitable benefits which are not funded of $1 million or more; and (2) eliminating the special exception from the coverage of this event for a plan merger, consolidation or transfer of assets or liabilities (proposed § 2617.14(c)).

One comment requested that the PBGC clarify whether this section applies to a sale of stock as well as a sale of assets. The proposed and the final regulation both use the term "ownership interest." The term "ownership interest" includes stock in a corporation. Therefore, the regulations apply to a sale of stock or assets.

The same comment also suggested that the PBGC consider applying this section not only to sales but also to other types of transfers that otherwise meet the requirements of this section. The reference to a sale situation in the proposed regulation is intended to be merely illustrative of a frequent event subject to this section. The term "transfer", which is used in the final regulation, includes but is not limited to, a sale, merger, acquisition, consolidation, distribution of a cash or stock dividend, distribution of capital, a gift or a devise. Therefore, the proposed and the final regulations apply to other types of transfers in addition to sales.

Another comment suggested that the PBGC expand the scope of this event to apply to multiple employer and multiemployer plans, possibly with a 3 percent *de minimis* rule for administrative feasibility. The comment could be read to refer to a change in (1) the ownership interest of a contributing employer, or (2) the total group of contributing employers (*e.g.*, a withdrawal of an employer). The PBGC has rejected this comment under either reading. As to the first reading, a multiemployer or a multiple employer plan is normally maintained by many employers. A change in the ownership interest of one employer does not normally indicate a danger of plan termination. With respect to the second reading, a withdrawal of one employer would not normally be indicative of an event that would jeopardize plan continuation. In the case of the withdrawal of a major contributing employer, the PBGC should be so advised in a timely manner under section 4063. In addition, if there is a substantial reduction in the number of active participants the PBGC should be so advised in accordance with § 2617.14.

Two comments suggested that the PBGC waive the 30-day notice requirement if the net worth of the employer after the transaction is equal to or greater than the net worth of the employer before the transaction. The PBGC has rejected this suggestion. This is a factor appropriately considered by the PBGC when it reviews a 30-day notice. In addition, the PBGC believes that it would be burdensome to expect a plan administrator to determine the net worth of the employer before and after the transaction. Accordingly the PBGC believes it appropriate not to include a net worth test in this event to enable the plan administrator to avoid having to make this complex calculation.

Finally, the PBGC wishes to note that the plan administrator of the plan at the time the obligation to report arises has the obligation to notify the PBGC of the occurrence of an event under this section. For example, assume that a company maintains a separate plan for one of its large divisions. Under the plan, the company is the plan administrator. The company enters into an agreement to sell the division in 90 days to a company that will assume the plan. In this situation, the seller is required to notify the PBGC. However, if the company had sold the division without any preliminary agreement the buyer would be required to notify the PBGC.

*Additional events not included in the regulation*—One comment suggested that the PBGC consider prescribing as an additional reportable event, a creditor's claim against a plan under state law (*e.g.*, a claim by a divorced spouse of a participant). The PBGC has decided not to add this situation as a reportable event. The PBGC believes that creditors' claims against a plan are unlikely to be significant, in and of themselves, or indicative of a possible danger of or need for plan termination. The reportable events prescribed in this regulation should provide the PBGC with adequate notice of plan or employer financial problems.

Another comment recommended that the regulation provide that a reportable event occurs when a plan sponsor takes action that substantially reduces (*e.g.*, a 50 percent reduction) its net worth for Title IV (*e.g.*, declares a dividend, redeems stock, or spins-off a substantial member of the controlled group). The comment suggested that this event is necessary to enable the PBGC to take timely action to prevent a plan sponsor from intentionally reducing its net worth to reduce its employer liability upon a subsequent plan termination.

The PBGC has rejected this recommendation because the scope of the recommended event is overbroad. A significant drop in net worth for Title IV purposes is not necessarily indicative of a danger of plan termination and consequently an increase in PBGC's risk of loss. However, the PBGC believes that even if the event were more limited in scope (*e.g.*, by providing that a reportable event occurs only if the plan has nonforfeitable benefits which are not funded), it would still be unnecessary because other reportable events are sufficient to provide the PBGC with notice of significant declines in an employer's financial condition. In addition, the PBGC believes that the recommended event is unnecessary because the PBGC, in determining an employer's net worth for purposes of the employer liability provisions in Title IV, has the authority under section 4062(c)(2) to set aside improper asset transfers made by the employer. Finally, the PBGC believes that in the absence of clear necessity, it would be undesirable to require reporting that would necessitate the complex calculations and business judgments involved in determining net worth.

*Effective date*—One comment urged the PBGC not to make the obligation to report events added pursuant to the PBGC's authority under Section 4043(b)(9) retroactive to a date before the final rule is published in the Federal Register. Another comment suggested that the reporting requirements in the regulation should have a retroactive effective date for pending reportable event cases in order to require submission of necessary information, such as that listed in the proposed regulation. The final regulation is effective for reportable events occurring on or after 30 days after the date of publication. Therefore, a plan administrator is only obligated to report the occurrence of any of the three new reportable events added pursuant to section 4043(b)(9) (*i.e.*, bankruptcy, insolvency, or similar settlements (§ 2617.21), liquidation or dissolution (§ 2617.22), and transactions involving a change of employer (§ 2617.23)), occurring on or after 30 days after the date of publication. The PBGC believes there is no need for the final regulation to have a retroactive effective date in order to obtain necessary information in pending cases because the PBGC can always request the submission of necessary information.

Miscellaneous Comments

A number of comments were received that are beyond the scope of the final rule or beyond the PBGC's statutory authority under § 4043. They included suggestions to:

1. Eliminate the separate filing of Form PBGC–1 and permit payment of premiums to the IRS with the filing of

the plan's annual report (Form 5500 series).

2. State in the final regulation that this part does not relieve a plan administrator from the obligation to report the occurrence of events under sections 4062(e) and 4063. Part 2617 is limited to reportable events under § 4043 only. Accordingly, it would be inappropriate to discuss the filing obligations under sections 4062(e) and 4063 in Part 2617. These sections apply according to their terms.

3. Promulgate regulations under section 4062(e) of the Act.

4. Include a listing on the annual report for events under sections 4062(e) and 4063 of the Act. (The PBGC notes that the Form 5500 series already includes such a listing), and

5. Alter or eliminate section 4043(b)(3) by statutory amendment since the relevance of the 20 (or 25) percent reduction in active participants test is subject to many variables, is not necessarily indicative of a troubled plan, and a plan administrator will find it impossible to determine whether and when a reportable event has occurred. As an alternative, include only active participants with 5 years or more service in the comparison and make the comparison year-end to year-end rather than at any time during the year; include a secondary test which would be to report a reduction to 50 percent of all beginning of the year active participants after such reduction had continued or was expected to continue for 60 days.

In addition, the PBGC received a few other miscellaneous comments that were rejected because the PBGC believes they would not improve the final regulation.

The formal requirements of the PBGC's Statement of Policy and Procedures (43 FR 58237 (December 13, 1978)) implementing the President's Order on improving government regulations (Executive Order 12044) do not apply to this final rule because a notice of proposed rulemaking relating to Reporting and Notification Requirements for Reportable Events was issued before the effective date of the PBGC's Statement of Policy and Procedures (43 FR 58237, 58239). Nevertheless, the PBGC's Policy Committee has reviewed this regulation and has determined that this final rule would be a "significant regulation" according to the criteria prescribed by Executive Order 12044 and the PBGC's Statement of Policy and Procedure, because the regulation deals generally with matters that are likely to engender substantial public interest or controversy. The PBGC's Policy Committee has also determined that a regulatory analysis would not be required because the regulation is unlikely to have a major economic impact.

In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulations is hereby amended by adding a new Part 2617 reading as follows:

## PART 2617—REPORTING AND NOTIFICATION REQUIREMENTS FOR REPORTABLE EVENTS

Sec.

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2617.21 Bankruptcy, insolvency, or similar settlements.
2617.22 Liquidation or dissolution.
2617.23 Transaction involving a change of employer.

Authority: Secs. 4002(b)(3), 4043, 4065, Pub. L. 93-406, 88 Stat. 1004, 1024-25, 1032 (29 U.S.C. 1302(b)(3), 1343, 1365).

### § 2617.1 Purpose and scope.

(a) The purpose of this part is to prescribe the specific reporting and notification requirements imposed by section 4043 of the Act.

(b) This part applies to all plans covered by section 4021 of the Act for which a Notice of Intent to Terminate has not been filed with the PBGC.

### § 2617.2 Definitions.

For purposes of this part (unless otherwise indicated or required by the context)—

"Act" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.* (1976)).

"Active participant" means—

(a) With respect to a single employer plan, a participant who—

(1) Is receiving compensation for work performed;

(2) Is on paid or unpaid leave granted by an employer for a reason other than a layoff;

(3) Is laid off from work for a period of time which has lasted less than 30 days; or

(4) Is absent from work due to a recurring reduction in employment, which occurs at least annually.

(b) With respect to a plan to which more than one employer contributes, a participant, other than—

(1) A retiree; or

(2) A former employee of a contributing sponsor who has incurred a break in service under the plan.

"Bankruptcy case" means a case under Title 11 of the United States Code (11 U.S.C. 101 *et seq.*).

"Break in service" means the greater of a one-year break in service or such other period specified in the plan used for purposes of vesting under the plan.

"Code" means the Internal Revenue Code of 1954, as amended.

"Contributing sponsor" means each trade or business that is obligated to contribute to a plan, whether or not a funding waiver or variance has been granted by the Secretary of the Treasury.

"Controlled group" means one or more trades or businesses (whether or not incorporated) under common control within the meaning of Part 2612 of this chapter.

"Distribution" means a direct or indirect benefit payment made in any form by a plan to a participant, including but not limited to, a monthly annuity payment, a lump-sum payment or a direct transfer of a plan asset other than cash. A cash payment made by an insurer pursuant to an irrevocable commitment shall not be considered a "distribution."

"Employer" means a trade or business (whether or not incorporated) maintaining a plan and all trades or businesses (whether or not incorporated) under common control within the meaning of Part 2612 of this chapter, with such trade or business.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, which cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and which is legally enforceable against the insurer by the participant or beneficiary.

"IRS" means the Internal Revenue Service.

"Money purchase plan" means an individual account plan, as defined in section 3(34) of the Act, other than a profit sharing plan or stock bonus plan, in which the employer's contributions are fixed or determinable.

"Nonforfeitable benefits which are not funded" means nonforfeitable benefits, as defined in § 2605.6 of this chapter, in excess of plan assets.

"Normal retirement benefit" means normal retirement benefit as defined in Code section 411(a)(9) and Treas. Reg. § 1.411(a)-7(c).

"Participant" means—

(a) An individual who has satisfied the participation requirements, if any, prescribed by the plan and who is retaining or accruing credited service under the plan (other than a non-vested former employee who has incurred a break in service under the plan);

(b) A former employee with vested rights to immediate or deferred benefits or a retiree receiving or eligible to receive benefits from the plan, other than a former employee or retiree to whom an irrevocable commitment has been made to pay all the benefits to which he or she is entitled under the plan;

(c) A deceased individual who has one or more beneficiaries receiving or eligible to receive benefits from the plan, except when all the benefits payable under the plan with respect to a deceased individual have been satisfied through the purchase of irrevocable commitments; or

(d) Any other individual who is defined as a participant under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan" means a single plan (whether it be a single employer, multiemployer or multiple employer plan), as opposed to a number of plans, if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries.

"Plan administrator" means the plan administrator, as defined in section 4001(a)(1) and section section 3(16) of the Act. For this purpose, the term "employer" as used in section 3(16)(B), is defined in section 3(5) of the Act.

"Plan sponsor" means the plan sponsor, as defined in section 3(16)(B), of the Act. For this purpose, the term "employer" as used in 3(16)(B), is defined in section 3(5) of the Act.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Railroad Retirement benefits" mean benefits payable under the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.* (1976)).

"Retirement benefit" means a benefit payable upon late, normal, early, or disability retirement, other than a welfare benefit described in section 3(1) of the Act, to a participant who leaves or has left covered employment.

"Single employer plan" means a plan maintained by one trade or business (whether or not incorporated) or by two or more trades or businesses (whether or not incorporated) all of which are under common control within the meaning of Part 2612 of this chapter.

"Social Security benefits" mean old age, survivors, and disability insurance benefits payable under Title II of the Social Security Act (42 U.S.C. 301-1400).

"Substantial owner" means a substantial owner as defined in Section 4022(b)(6)(A) of the Act.

"Title IV" means Title IV of the Act.

**§ 2617.3 Requirement of notice.**

(a) *Obligation to file.* Except where the requirement is expressly waived by this part, the plan administrator, or a duly authorized representative, shall file with the PBGC a notice of all reportable events described in this part no later than 30 days after the plan administrator knows or has reason to know a reportable event has occurred. When a notice is submitted by a plan administrator's duly authorized representative, other than an attorney at law, it shall be accompanied by a notarized power of attorney, signed by the plan administrator, which authorizes the representative to sign and submit a notice and, if desired, also authorizes the representative to act on behalf of the plan administrator in connection with the notice.

(b) *Contents of notice.* The plan administrator shall include the information listed in this paragraph, and when applicable, the information specified in Paragraph (c) of this section, in a notice required to be submitted under this section. The plan administrator shall submit the most recent information available. The plan administrator shall identify the response to each numbered item in this paragraph by item number. If any requested information is included in an IRS form or submission attached to the notice, instead, the information may be incorporated by reference to the number, date, and page(s) of the IRS form or submission where it appears. Any required documentation previously filed with the PBGC need not be refiled, but may be incorporated by reference to the previous submission. The plan administrator shall include the following information in a notice:

(1) The name of the plan;

(2) The name, address, and telephone number of the plan sponsor(s);

(3) The name, address, and telephone number of the plan administrator. If the plan administrator is a corporate body, the name of an individual that should be contacted;

(4) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, also state the EIN-PIN last filed with the PBGC. If and EIN-PIN has not been assigned, so indicate;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document currently in effect, i.e., a copy of the last restatement of the plan and all subsequent amendments;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan;

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion relating to the plan; and

(9) A Copy of the most recent determination letter issued by the IRS (if any) relating to the plan.

(c) *Additional information.* With respect to the following reportable events, the information specified below must be submitted in addition to that listed in Paragraph (b ) of this section:

(1) For an event described in § 2617.14(a) (relating to an active participant reduction):

The number of participants and the number of active participants as of the beginning of the immediately preceding and the current plan year and as of the date of the event; the number of active participants with fully vested rights, the number of such participants with partially vested rights, and the number of such participants without vested rights, as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of retired participants receiving benefits as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of former employees with vested rights and the number of deceased participants whose beneficiaries are receiving or entitled to receive benefits as of the date of the event or, if this information is not available as of this date, the beginning of the current plan year. (For those plans determining the number of active participants as of the end of a plan year, instead of at the beginning of a plan

year, in accordance with § 2617.14(c), the information required by this paragraph as of the beginning of a plan year shall be provided as of the end of the previous plan year.)

(2) For an event described in § 2617.16(a) (relating to a minimum funding violation):

A statement of the current funding standard account, or its alternative, showing the balance at the beginning of the plan year and the charges and credits to the account for the plan year that are required under Section 302 of the Act and Section 412 of the Code; in the case of a single employer plan, a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(3) For an event described in § 2617.17(a) (relating to an inability to pay benefits when due):

The reason(s) why the plan is unable to pay benefits, including a statement of how long this inability is likely to continue; the amount of the benefits due during the current payment period and the amount of assets available to pay those benefits; the normal date of benefit payment; the amount and date of the last benefit payment.

(4) For an event described in § 2617.18(a) (relating to a distribution to a substantial owner):

The amount and form of the distribution; a statement of whether an indemnity agreement has been entered into between the participant receiving the distribution and the plan trustee concerning lump-sum distributions to the 25 highest paid employees of the benefits subject to the early termination restrictions of Treas. Reg. § 1.401–4(c).

(5) For an event described in § 2617.21(a) (relating to a bankruptcy or liquidation):

A copy of all papers filed in the relevant proceedings, including but not limited to, petitions and supporting schedules; the last date for filing claims, if known; the name, address and telephone number of any trustee or receiver of the contributing sponsor.

(6) For an event described in § 2617.23(a) (relating to a transaction involving a change of employer):

The name, address, and telephone number, of the new contributing sponsor, or of the trade or business no longer controlled by the contributing sponsor, or of the new trade or business controlling the contributing sponsor, as applicable; a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor before and after the transaction, and of the trade or business no longer controlled by the contributing sponsor, or the new trade or business controlling the contributing sponsor, as applicable (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information.

(e) *How and where to file.* A notice and information required to be filed with the PBGC by this part may be sent by mail or submitted by hand during normal working hours to the Office of Program Operations, Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street NW., Washington, D.C. 20006.

(f) *Optional consolidated filing.* A plan administrator may file a single notice with respect to the occurrence of more than one reportable event, or two or more plan administrators may file a single notice with respect to one or more reportable events when—

(1) More than one event for which a notice is required by this section has occurred and the plan administrator is able to give the PBGC simultaneous timely notification of the events; or

(2) An event described in §§ 2617.21(a), 2617.22(a), or 2617.23(a) has occurred, and all plan administrators who are required to file a notice pursuant to this section sign the same notice.

(g) *Effect of failure to file.* Failure to file a notice required by this section or failure to include all information required in the notice constitutes a violation of Title IV of the Act.

### § 2617.4 Reporting of reportable events on annual report.

A plan administrator shall report the occurrence of a reportable event described in this part in the annual report filed pursuant to Part 2606 of this chapter (whether or not the filing of the 30-day notice is waived under this part).

### § 2617.5 Obligation of employer.

Whenever an employer making contributions under a plan covered by Section 4021 of the Act, knows or has reason to know that a reportable event has occurred, it shall notify the plan administrator immediately.

### § 2617.6 Date of filing.

(a) Any notice or document required to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, if—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraphs (1) and (2) are not met, the notice or document is considered filed on the date it is received by the PBGC. Notices or documents received after regular business hours are considered filed on the next regular business day.

### § 2617.7 Computation of time.

In computing any period of time prescribed or allowed by the rules of this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

### §§ 2617.8–2617.10 [Reserved]

### § 2617.11 Tax disqualification.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues a notice that a plan has ceased to be a plan described in § 4021(a)(2) of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section.

### § 2617.12 Title I non-compliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of Labor determines that the plan is not in compliance with Title I of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section.

### § 2617.13 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased. A decrease in the retirement benefit payable with respect to any participant includes the elimination of any type of

retirement benefit, a decrease in the amount of any accrued retirement benefit or a certain or potential decrease in the amount of the retirement benefit that would accrue in the future, determined in accordance with Paragraph (d) of this section, and an increase in the age, service or other requirements for entitlement to any retirement benefit.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section, *unless* all of the following conditions exist:

(1) The plan has 100 or more participants as of the end of the previous plan year;

(2) Except as provided in Paragraph (c) of this section, under the amendment, there is—

(i) A decrease in the amount of the accrued normal retirement benefit with respect to any participant; or

(ii) A decrease of more than 50 percent in the amount of normal retirement benefit that would accrue in the future with respect to more than 50 percent of the number of active participants as of the end of the previous plan year; and

(3) The amendment is not adopted in order to comply with the requirements of any federal law.

(c) *Exceptions for certain amendments.* An amendment is not an amendment described in Paragraph (b)(2) of this section, and therefore the 30-day notice requirement is waived, if—

(1) With respect to a plan integrated with Social Security benefits or Railroad Retirement benefits, the amendment changes the level of integration by taking into account changes in the benefit levels payable or any increase in the wage base under Title II of the Social Security Act or any increase in the benefit levels payable under the Railroad Retirement Act of 1974;

(2) With respect to a plan integrated with Social Security benefits or Railroad Retirement benefits, the amendment changes the method of integration;

(3) The amendment integrates the plan with Social Security benefits or Railroad Retirement benefits; or

(4) The amendment is adopted incident to another amendment that increases the amount of the normal retirement benefit provided by the same employer's contributions to a second plan covering the same participants that is either a plan covered by section 4021 of the Act, or a money purchase plan, and the amount of the increase of the projected normal retirement benefit under the second plan is equal to or exceeds the amount of the decrease in the normal retirement benefit provided under the first plan. The increase in the projected normal retirement benefit under a money purchase plan shall be determined by using the interest and other appropriate assumptions of the covered plan.

(d) *Calculation of benefit decrease.*— (1) *Change in form of benefit or retirement age.* When a plan amendment changes the retirement age or the form of the benefit, the decrease, if any, in the amount of the retirement benefit shall be computed by first converting the amount of the retirement benefit provided by the plan immediately before the amendment to the actuarially equivalent amount of the benefit for the retirement age and form of benefit under the amendment, using the applicable conversion factors prescribed by the plan, and then subtracting the amount of the retirement benefit after the amendment from the amount of the converted pre-amendment benefit. If no applicable conversion factors are prescribed by the plan, the conversion factors prescribed by Part 2609 of this chapter for computing maximum guaranteeable benefits shall be used.

(2) *Salary assumptions.* For purposes of determining whether there is a decrease or potential decrease in the amount of any accrued retirement benefit or the retirement benefit that would accrue in the future, it should be assumed that each participant's salary will change up to the age at which full accrued benefits are payable in accordance with the plan's salary scale.

### § 2617.14 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is less than 80 percent of the number of active participants at the beginning of the plan year, or is less than 75 percent of the number of active participants at the beginning of the previous plan year.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section, if the conditions in either Paragraph (b)(1) or (b)(2) of this section exist.

(1) The plan has less than 100 participants as of the beginning of either the current or the previous plan year.

(2) With respect to a single employer plan, as of the date of the event, the total number of active participants covered by all the single employer plans covered by § 4021 that are maintained by the employer is not less than 80 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's current plan year, or not less than 75 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's previous plan year.

(c) *Determination of the number of active participants.* The number of active participants as of the beginning of a plan year may be determined as of the end of the previous plan year.

### § 2617.15 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the events described in this section.

### § 2617.16 Failure to meet minimum funding standards.

(a) *Reportable event.* A reportable event occurs when the plan fails to meet the minimum funding standards under section 412 of the Code or section 302 of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is *not* waived for the event described in this section.

### § 2617.17 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is unable to pay benefits when due. Except as provided in Paragraph (c) of this section, a plan is unable to pay benefits when due if the plan does not pay any participant, who is then entitled to benefit payments, the full promised benefits to which he or she is entitled in the form prescribed under the terms of the plan.

(b) *Waiver.* The 30-day notice requirement in § 2617.3(a) is *not* waived for the event described in this section.

(c) *Administrative delays.* A plan shall not be treated as being unable to pay benefits when due if its failure to pay benefits is caused solely by: (1) the need to verify any participant's eligibility for benefits; (2) the inability to locate any participant; or (3) any other administrative delay if such delay lasts less than the shorter of two months or two full benefit payment periods.

### § 2617.18 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs when there is a distribution or distributions under the plan to a participant who is a substantial owner if—

(1) The total of all distributions to the substantial owner within a 24-month period has a value of $10,000 or more;

(2) The distribution or distributions were not made by reason of the death of the participant; and

(3) Immediately after the distribution or the last distribution in a series, the plan has nonforfeitable benefits which are not funded.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3 is waived for the event described in this section, *unless*—

(1) A plan makes a distribution or distributions within a 12-month period to a substantial owner having a total value of $10,000 or more; and

(2) The amount of the distribution or distributions exceeds the amount of the maximum guaranteeable benefit for the substantial owner, determined under § 2609.7 of this chapter, for the year in which the distribution or the last distribution in a series was made.

(c) *Valuation of distribution.* The value of a distribution described in papragraphs (a) or (b) of this section is determined in accordance with the provisions of this paragraph.

(1) The value of a distribution, other than an irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value of any assets distributed in a form other than cash, determined as of the distribution date in accordance with Subpart B of Part 2611 of this chapter.

(2) The value of an irrevocable commitment is the purchase price of the irrevocable commitment, or the value, determined in accordance with reasonable actuarial assumptions, of the benefits payable pursuant to that irrevocable commitment. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under Part 2610 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of the Act and section 412 of the Code.

(d) *Date of distribution.* The date of distribution of an irrevocable commitment is the effective date of the irrevocable commitment. The date of distribution of a cash distribution shall be the date it is received by the participant. The date of all other distributions shall be the date when the plan relinquishes control over the assets transferred directly or indirectly to the participant.

(e) *Determination date.* The determination of whether a participant is a substantial owner, or has been in the preceding 60 months, is made on the date when there has been a distribution or distributions with a total value of $10,000 or more.

(f) *Nonforfeitable benefits which are not funded—valuation.* For purposes of paragraph (a)(3) of this section, in determining whether a plan has nonforfeitable benefits which are not funded—

(1) Assets are valued in accordance with the valuation standards contained in Part 2611 of this chapter; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under Part 2610 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of the Act and section 412 of the Code.

**§ 2617.19 Plan merger, consolidation or transfer.**

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of the Act or section 414(1) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the events described in this section.

**§ 2617.20 Alternative compliance with reporting and disclosure requirements of Title I.**

(a) *Reportable event.* A reportable event occurs when an alternative method of compliance (not of general applicability) is prescribe for a plan by the Secretary of Labor under section 110 of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section.

**§ 2617.21 Bankruptcy, insolvency or similar settlements.**

(a) *Reportable event.* A reportable event occurs with respect to a single employer plan, when a contributing sponsor—

(1) Commences a bankruptcy case, or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it, any other type of insolvency proceeding (including, but not limited to the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other non-judicial composition, extension or settlement with substantially all its creditors.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is *not* waived for the event described in this section.

**§ 2617.22 Liquidation or dissolution.**

(a) *Reportable event.* Except as provided in Paragraph (c) of this section, a reportable event occurs with respect to a single employer plan, when a contributing sponsor—

(1) Is involved in any transaction to implement its complete liquidation; or

(2) Institutes or has instituted against it a proceeding to be dissolved, or is dissolved, whichever occurs first.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is *not* waived for the event described in this section.

(c) *Reorganizations described in section 4062(d).* This section does not cover any of the reoganizations described in section 4062(d) of the Act.

**§ 2617.23 Transaction involving a change of employer.**

(a) *Reportable event.* Except as provided in Paragraph (c) of this section, a reportable event occurs with respect to a single employer plan of a contributing sponsor with nonforfeitable benefits which are not funded of $1 million or more when—

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor—

(i) There is or will be a new contributing sponsor that is not a member of the controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another trade or business, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of assets of or an ownership interest in another trade or business, the sponsor and that trade or business are no longer part of the same controlled group.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is *not* waived for the event described in this section.

(c) *Certain reorganizations.* This section does not apply to—

(1) A reorganization involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation; and

(3) A reorganization involving a merger, consolidation, or division solely between (or among) members of the same controlled group as the contributing sponsor.

(d) *Definition of "transaction".* For purposes of this section, the term "transaction" includes, but is not limited to, a legally binding agreement, whether or not written, to transfer, a transfer, and a change in ownership that occurs as a matter of law or through the exercise or laps of pre-existing rights.

(e) *Nonforfeitable benefits which are not funded-valuation.* For purposes of paragraph (a) of this section, in determining whether a plan has nonforfeitable benefits which are not funded of $1 million or more—

(1) Assets are valued in accordance with the valuation standards contained in Part 2611 of this chapter; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under Part 2610 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of the Act and section 412 of the Code.

Effective date. This part is effective on September 19, 1980.

Issued in Washington, D.C. this 15th day of August 1980.

Ray Marshall,

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue the same.

Henry Rose,

*Secretary, Pension Benefit Guaranty Corporation.*

[FR Doc. 80-25249 Filed 8-19-80; 8:45 am]

BILLING CODE 7708-01-M

Federal Register

Wednesday
August 20, 1980

Part IV

# Department of the Interior

Fish and Wildlife Service

## Beaver Dam Slope Population of the Desert Tortoise in Utah; Listing as Threatened With Critical Habitat

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

# Endangered and Threatened Wildlife and Plants; Listing as Threatened With Critical Habitat for the Beaver Dam Slope Population of the Desert Tortoise in Utah

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines the Beaver Dam Slope population of the desert tortoise (*Gopherus agassizii*) to be a Threatened species and determines the Critical Habitat of the species. The tortoise population occurs on the Beaver Dam Slope of southwestern Washington County, Utah. This action is being taken because the population is continuing to decline because of habitat deterioration and because of past overcollection. The Bureau of Land Management, which owns the entire Critical Habitat, has recently taken steps which it is hoped can maintain a viable population of tortoises and allow for maximum grazing. For this reason, the tortoise is being listed as Theatened instead of Endangered as originally proposed. The rule provides the full protection of the Endangered Species Act of 1973, as amended, to this population.

**DATES:** The rule becomes effective on September 19, 1980.

**ADDRESSES:** Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to the rule are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

**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 August 8, 1977, the U.S. Fish and Wildlife Service was petitioned by Dr. Glenn R. Stewart on behalf of the Desert Tortoise Council to list the Utah desert tortoise population as Endangered under provisions of the Endangered Species Act of 1973. Included in the petition was a recommendation for Critical Habitat. The main threats to this unique population were said to be competition from grazing animals, overgrazed habitat, and problems with collection of individuals.

After careful review of the petition by the Office of Endangered Species, the Director of the Service notified the Desert Tortoise Council on August 30, 1977, that the petition did indeed supply substantial information as required by the Act to warrant a proposal to list the population under provisions of the Act. On August 23, 1978, the Fish and Wildlife Service published a proposal to list this population as Endangered and included a 35 square mile area of Bureau of Land Management administered land in southwestern Utah as Critical Habitat (43 FR 37662-37665).

On March 6, 1979, the Service withdrew all proposed Critical Habitats until such time as they could be reproposed in accordance with the 1978 amendments (see the Federal Register, 44 FR 12382-12384). On December 7, 1979, the Service reproposed Critical Habitat to include exactly the same area as originally proposed. See the Federal Register of December 7, 1979 (44 FR 70680-70682) or the Service's January 1980, *Endangered Species Technical Bulletin* for details.

In conjunction with the reproposal for Critical Habitat, the Service held a public meeting in St. George, Utah, on January 10, 1980, to explain the proposal, answer public questions, and to solicit additional information on the biology of the tortoise and the economic effects of a Critical Habitat designation on Federally authorized and funded projects in the area. Several individuals, including U.S. Senators Hatch and Garn, requested that a public hearing be held on the reproposal of Critical Habitat. Accordingly, a public hearing was held on March 25, 1980, at St. George, Utah, to take testimony on the designation of Critical Habitat. That testimony is part of the public record and has been carefully considered in the drafting of this final rule.

All public comment periods were closed on April 9, 1980.

The following section provides a brief introduction to the biology of the Beaver Dam Slope population of the desert tortoise. More information may be obtained by consulting the references cited at the end of this section.

The desert tortoise, *Gopherus agassizii,* is one of three species of the genus *Gopherus* occurring in the United States. A fourth *Gopherus, G. flavomarginatus,* occurs in Mexico and is listed as Endangered on the U.S. List of Endangered and Threatened Wildlife and Plants. The desert tortoise inhabits the Mojave and Sonoran deserts of the southwestern United States (Arizona, California, Nevada, Utah) and adjacent areas of Mexico as far south as southern Sonora. The biology of this species has been reviewed by Ernst and Barbour (1972), Smith and Smith (1979) and Auffenberg and Franz (1978); extensive references on this species have been provided by Douglas (1975, 1977). Throughout the United States, the tortoise has been the subject of extensive research as to its status, biology, potential threats and distribution; most of this research has been sponsored or conducted by the Bureau of Land Management in cooperation with the various states. The chief threats to the tortoise include habitat destruction through development for residential and agricultural use, overgrazing (Berry, 1978), geothermal development, taking as pets (now largely controlled by individual states), malicious killing, from being run over on roads, and for competition with grazing or feral animals. Natural predation may or may not be a significant factor in the decline of this species, depending on age class involved.

From 1936 to 1946, the Beaver Dam Slope population was studied by Drs. Angus Woodbury and Ross Hardy. While the whole Beaver Dam Slope was surveyed, they concentrated their efforts in a two square mile area where they found the greatest concentration of tortoises. Some 270 tortoises were marked and a few are reported to remain thus making them part of one of the oldest marked populations of vertebrates in the world. According to the petition submitted by the Desert Tortoise Council in 1977, 2000 tortoises may have inhabitated the slope at one time with fewer than 350 remaining. The ecology of this population is discussed by Woodbury and Hardy (1948), Coombs (1974a,b; 1977a,b,c; 1979) and Hansen et al. (1976). Concern for the continued survival of the tortoise on the Beaver Dam Slope is expressed by Coombs (1977c), Hardy (1976) and Stewart (1976). Dodd (1978) reviewed the status of the petition to list this species as Endangered and Day (1979), Smith (1979), and Rowley (1978) discussed aspects of State and BLM management programs and why they believe the tortoise population should not receive Federal protection.

Over the last few years, the Bureau of Land Management has made adjustments to correct livestock grazing problems (statement of F. Rowley at St. George hearing). Fifty percent of cattle use was reduced in 1965 with another 23 percent proposed (however, this is in litigation at present). Adjustments have

been made in season of use and an Allotment Management Plan (AMP) is in the process of being implemented. BLM has proposed the establishment of a 3040 acre natural study area for the desert tortoise. Further studies have been contracted. In addition, Mr. Rowley has indicated that grazing will in the future not extend beyond April 30. The AMP calls for a stocking rate of 26 acres/cow/ month which allows 156 acres per cow for the six-month grazing season. Mr. Rowley believes that trampling will therefore be insignificant. BLM's land use plan calls for vehicles to be restricted to existing roads and trails.

The steps outlined above, form the basis for the Service's decision that this population should be listed as Threatened instead of Endangered as originally proposed in 1978 (see discussion below).

The latest survey of the tortoise was sponsored in 1980 by the Utah Division of Wildlife Resources and BLM. A 60 day study revealed a total of 82 tortoises over a 30 square mile area. Ninety shells were recovered but were reported to be only a part of those seen. Of interest is that a balanced sex ratio was found.

### Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any species to the list of Endangered and Threatened Wildlife and Plants.

In the August 23, 1978, Federal Register (43 FR 37662–37665) the Service proposed to list the Beaver Dam Slope population of the desert tortoise (*Gopherus agassizii*) as Endangered with Critical Habitat. The Critical Habitat portion of this proposal was withdrawn on March 6, 1979 (44 FR 12382–12384) and reproposed on December 7, 1979 (44 FR 70680–70682).

Comments received thru April 9, 1980, on the proposed listing of this tortoise population are summarized below. A total of 85 comments were received in response to the original proposal and reproposal of Critical Habitat. 24 comments were formally presented for the record at the public hearing in St. George; these comments are summarized below with the other comments. Responses were received from Governor Scott Matheson of Utah, Senator Orrin Hatch of Utah, Utah State Senator Ivan Matheson, Douglas F. Day (Utah Division of Wildlife Resources), various city and county representatives, concerned local citizens, scientists, conservation organizations, the Bureau of Land Management, and several other governmental organizations.

In a letter dated October 31, 1978, Gov. Matheson states that the State's position on the proposed listing had not changed since the Division of Wildlife Resources letter of September 23, 1977 (as summarized in the Federal Register proposal of August 23, 1978; 43 FR 37662–37665). He recommended "the status of the desert tortoise in this area be kept under review until all the facts are in before a final decision is made." In a letter dated April 8, 1980, Gov. Matheson reiterated the State's opposition and made four points:

(1) There is no compelling reason to distinguish the Beaver Dam Slope population of the desert tortoise from the range of the tortoise generally. Any endangered species designation or critical habitat proposal should be based upon a careful and comprehensive analysis or the tortoise range to determine where restrictive actions are necessary and appropriate.

(2) The presumed threats to the population are not substantiated and do not recognize changing conditions. The Fish and Wildlife Service cites overgrazing as a threat to the tortoise population, yet the proposal fails to document overgrazing and more importantly, fails to link grazing activity in any meaningful way to tortoise mortality. To the contrary some data suggests that livestock predators may be a significant threat to young tortoises.

The Fish and Wildlife Service has also failed to adequately consider recent actions of the Bureau of Land Management to reduce grazing use and establish a 3,000 acre protected area for the tortoise. BLM is currently restrained from implementing this program, but there is no evidence that the tortoise population cannot tolerate a short delay. It is logical to await the outcome of the grazing environmental statement process and to use that time to resolve some of the biological questions that have surfaced in this review.

The proposal does not recognize that collection and removal of tortoises has declined with the rerouting of traffic to Interstate 15. The Fish and Wildlife Service should reexamine the removal problem based on new traffic patterns.

Finally, the Fish and Wildlife Service has failed to document any substantial off-road vehicle use or establish any link from the ORB [sic] use to tortoise mortality.

(3) Section 4(b)4 of the Endangered Species Act requires a consideration of economic and other impacts in a critical habitat decision. Livestock grazing in the area is a significant contributor to the local economy. Precise quantification of the impact is not possible as the proposal does not detail the level or extent of grazing cuts required to mitigate the alleged threat. I am sure that the St. George hearing provided some indication of the potential economic impacts.

There is also evidence of minable concentrations of important minerals in the Beaver Dam Mountain. The mineral impacts of the critical habitat proposal need to be carefully analyzed.

(4) Other factors to be considered should include the local government policy toward land use restrictions. Again, that should be apparent from the public hearing.

Senator Hatch opposed the proposed designation of Critical Habitat stating:

(1) The consequences of the Critical Habitat designation to the management of affected federally controlled lands are potentially more severe than has been publically represented by the Service.

(2) Inquiry at the Office of Endangered Species failed to produce "definitive empirical evidence" for justification of the proposal.

(3) The most recent work was done at a time of poor range conditions because of drought. This may account for the "alleged decline".

(4) Since collecting is prohibited by Utah State law, a Critical Habitat designation will add nothing to the status improvement.

(5) ORV use is not a problem in this area.

(6) The population is not "unique".

Senator Hatch states that while he is "in support of reasonable measures to protect the tortoise population as a research sample," he believes the proposed designation (of Critical Habitat) is not a justified or prudent federal action.

State Senator Matheson strongly opposed the designation in two letters and states:

It is these kinds of tactics which continue to stir the Sagebrush Rebellion. It will bring a like move against the efforts of the Fish and Wildlife Service if they don't begin to give some credence to local needs and desires. The tremendous economic impact that would occur to the cattlemen of this area if 38 square miles were withdrawn has not been sufficiently measured. Cattle is [sic] one of the most important backbones of the Washington County economy. If we do not begin to see some rational action on the part of the Interior Department with recommendation for the well being of the people living in the area rather than the well being of useless animals, we may have to take actions that would be more severe than the Sagebrush Rebellion as a last alternative.

Mr. Day submitted a long letter and states:

We feel that a status review of the entire desert tortoise complex of the southwestern United States and northern Mexico would be in order to fully and logically assess the status of the species, rather than the piecemeal approach that seems to be operating now. A completely documented package would certainly be more palatable to the many and varied interests voicing support or complaints about the current procedure and proposal.

Studies conducted to date have documented current status of the Beaver Dam Slope population but have not been of long enough duration to indicate trends. This Division will soon be contracting with the Bureau of Land Management for further study to add to our knowledge base regarding this population, but only long-term monitoring will indicate the trend of numbers and age structure.

The apparent key to restoring this population to a higher level, based on present knowledge, is to reverse the trend in the forage base. The BLM's program, keyed to implementation of the Hot Desert ES, is designed to do this by various grazing management practices. The fencing of 3,040 acres for exclusive use by tortoise will also aid greatly. Unfortunately, both of these actions have been stymied by a recent court injunction against the imposition of grazing adjustments and the closure of the above-mentioned acreage. It appears that Department of the Interior's efforts would be better spent in trying to gain favorable judical decisions to implement the ES, a document required by legal action brought by the NRDC. We strongly believe that endangered status will do nothing that improved grazing practices cannot do, and public sentiment will undoubtedly be more favorable towards all concerned, if the Service proposal is not implemented.

We are gravely concerned that listing this subpopulation of the desert tortoise as endangered will have severe repercussions on the population itself for several reasons: (1) the "Sagebrush Rebellion" feeling in southern Utah is very strong, and misguided individuals or vandals might use this "excuse" to cause physical harm to tortoises; (2) current research on artificial propagation will be hampered because of permit red tape; (3) captive tortoises will not be turned in for obvious reasons, and our success with returning captives to the wild has been good to date; (4) the president's attempt to balance the federal budget may result in funding cuts for endangered species work, negating the very results desired; (5) delays in implementing any positive on-the-ground action by any agency until a recovery plan is drafted, reviewed, finalized and approved.

At the public hearing in St. George, a representative of Senators Garn and Hatch made the following points in opposing the proposed listing:

(1) The Hot Desert Grazing Management Plan developed by the Dixie Resource Office of the Bureau of Land Management (BLM) concluded that there are insufficient data to warrant listing.

(2) They state that there is a degree of dependence of desert tortoise upon livestock.

(3) The BLM has sufficient discretion in land management to afford adequate protection until more studies are completed.

(4) They state that there are insufficient data to make a Critial Habitat determination. Critical Habitat is an overreaction to the decline of the tortoise. They claim there is no evidence of the negative effects of livestock on tortoises. They support the fencing off of 3,000 acres by BLM to determine the effects of grazing. They believe that there will be a major negative impact on the cattle industry in southwestern Utah.

(5) The concept of Critical Habitat is called drastic and inflexible. They say this if the species is thriving elsewhere, it makes no sense to focus on a less significant area.

The following State and Federal government agencies were contacted but either had no comments or did not have any data concerning the population: U.S. Geological Survey, U.S. Air Force, U.S. Army Corps of Engineers, Arizona Game and Fish Department, California Department of Fish and Game, and Utah State Environmental Coordinating Committee. Both the Department of Energy and the BLM Utah State Director supplied information on the potential economic impacts of the proposed listing. The BLM office in Washington called for a full status review throughout the tortoise's range. BLM's Dixie Resource Area Office opposed the listing and reviewed past and proposed projects concerning the tortoise on the Beaver Dam Slope (see Background). Nevada Power and Light Co. provided information on the proposed Alton Pipeline, the Navajo-McCullough transmission line corridor, and the proposed Warner Valley McCullough transmission line right-of-ways. They recommended the elimination of any areas which might be affected from a Critical Habitat designation. One commenter neither supported nor opposed the proposal but requested additional information.

The following is a summary of comments of those who opposed the proposed listing and/or designation of Critical Habitat. One comment stated that there are many endangered species designations already in southwestern Utah. The commenter then stated that the Government now wants to "lock up" an area for the desert tortoise and perhaps other areas in addition to areas already "locked up".

There were 18 comments which stated that the reason the tortoise had declined on the Beaver Dam Slope was not because of problems with grazing but because tourists took tortoises as pets. This occurred primarily before the completion of the nearby interstate highway which uses another route than through the Beaver Dam Slope. This point was especially stressed by long time residents of the area and many recounted stories of tortoise selling. While many people thought this problem was not now significant, a few thought it might still be occurring.

Four comments stated that the tortoise population was not unique since the species has a large range and the Beaver Dam Slope population is not recognized as taxonomically distinct. Two persons stated that the BLM and environmentalists are waging an economic war on cattlemen and that the proposal is just another example. Two comments stated that a Critical Habitat designation may actually harm the tortoise population by drawing attention to it. One person stated that Eric Coombs, the person who did much of the work on the tortoise population in the 1970's, did not support the proposed listing and that, instead of Critical Habitat, areas on the Beaver Dam Slope should be declared "crucial" habitat and the tortoise designated "sensitive" instead of endangered.

One comment provided extensive discussion about how the Fish and Wildlife Service had not, in their opinion, followed proper government regulatory procedures. One comment stated that the Fish and Wildlife Service and BLM are at odds in their regulatory responsibility with regard to the Beaver Dam Slope. Eight comments were received which stated that the data used for the proposal were insufficient; most of these comments did not supply additional information. One comment stated that the Service should have prepared an environmental impact statement and that the requirements of NEPA are not satisfied until one is prepared. One commenter said that the Fish and Wildlife Service had inadequately cooperated with the Utah BLM concerning the desert tortoise. Three persons called for an "Economic Impact Statement" prior to any listing with Critical Habitat.

Three individuals questioned whether the desert tortoise was endangered throughout all or a significant portion of its range. These persons generally felt that the tortoise should not be listed unless it is endangered throughout its range. Seven comments were received which questioned the evidence the competition between cattle and tortoises. These commenters believe such evidence is weak or nonexistent and believe that the preponderance of evidence is that cows offer little competition from foraging.

Four persons stated that livestock grazing is good for tortoises because grazing practices allow the introduction of annuals on which the tortoise can feed. Three comments report that when grazing levels were up to ten times more on the Beaver Dam Slope than at present, more tortoises were present. These individuals believed that this indicated that cows were not responsible for the tortoise's decline. Two individuals questioned whether the atomic testing of the 1950's may have contributed to a decline in numbers of tortoises in southwestern Utah.

Two commenters stated that if the area was left alone (i.e., no government action), the tortoise population would recover by itself. Two individuals stated that instead of a Critical Habitat designation, 200 acres should be set aside by BLM in Utah to compliment BLM's 500 acre desert tortoise study

area in Arizona. One comment said that drought may be a factor in the apparent declining status of the tortoise in the 1970's.

Three letters were received which said that there had been no economic input requested from Washington County officials or those ranchers directly affected by the proposal. These letters claimed that only BLM was contacted for information and that the local people had no input to the proposed rules.

Many comments (16), especially from local ranchers and cattle associations, strongly protested any elimination or reduction of grazing in southwestern Utah which they felt would occur if this population's Critical Habitat was officially designated. Eight comments claimed that the proposal was either setting aside the land or "locking it up" from any other uses and that this should not be allowed. Six commenters stated that the ranges on the Beaver Dam Slope are not in poor condition and that this area is really prime winter range. One individual said that the Desert Tortoise Council is an outside obstructionist environmental group causing trouble. This person concluded that "the people have no power." Three additional letters expressed general complaints about government and governmental regulations. One person stated that the proposal infringed on the historical heritage of southwestern Utah.

There were five comments which addressed the Desert Tortoise Council's presentation at the meeting in St. George as either based on incorrect data or a "malicious attempt to distort facts." Eight commenters stated that there is no evidence that cattle step on dens or burrows or that they step on tortoises. Some of these individuals noted that the Beaver Dam Slope is primarily used for winter grazing when tortoises are likely to be hibernating.

Two comments stated that a potential cause of tortoise mortality is that they fight and during the course of fighting, one may be turned over and unable to right itself. There were 15 comments that predation by coyotes, bobcats, and/or kit foxes may have been significant causes of mortality; most believed cows were not a factor in the tortoise's decline. Three individuals stated that tortoises have actually increased in number or remained at a stable population level since man's presence had been "removed" from the Beaver Dam Slope.

One comment stated that tortoises have been successfully released back to their habitat. There were 20 comments which stated a belief that a designation of Critical Habitat would have adverse economic effects on the local ranchers or economy. Some of those who commented provided information about their ranching operations and how a complete stoppage of grazing rights would affect them.

Two individuals read the following statement adopted by the American Farm Bureau Federation:

At our 1980 meeting in Phoenix, Arizona, our delegate adopted the following policy positions on the Endangered Species Act: "The National Endangered Species Act of 1973 should be amended to provide that:

1. Listing a species as endangered shall be upon that basis alone and not on the basis of "rarity",
2. The law shall not encroach upon economic agricultural or sivicultural practices;
3. Proof of a species being endangered shall be on the petitioner or the Department of the Interior and not on the general public; and
4. Scientific data supporting the inclusion of a species shall receive wide dissemination to landowners and private organizations representing the rights of these landowners.

All federal and state agencies should be required to adopt procedures where by any proposed new or amended regulation shall be accompanied by *economic impact statements.*

Dr. James E. Bowns made the following statement:

*Habitat modification or deterioration by grazing animals*

The F.R.R. states that overgrazing could be expected to adversely modify critical habitat since cows:

(1) trample burrows
(2) may trample young tortoises
(3) destroy cover sites
(4) compete for food items especially in the spring and early summer

There are many references to overgrazing and continued habitat deterioration from various desert tortoise studies and reports. The following are three such statements.

(1) Range deterioration has occurred since the 1940's and perennial grasses are no longer common (Coombs, 1977b).

(2) The desert tortoise population is greatly depleted since the 1930's and 1940's. "Without doubt, part of this is caused by the deterioration of the range because of overgrazing by livestock. Once fairly common grasses are no longer in evidence and the size and vigor of most shrubs has diminished." (Hardy, 1976)

(3) *Casual observations* indicate livestock have a deleterious affect on tortoise populations *although no* field studies have been undertaken to determine the effects of grazing on the tortoise. (Berry, 1978)

All of the above statements are biased judgments that have no objective studies or data to support them. With all due respect to Dr. Hardy (statement #2 above), I find it difficult to believe that one's memory is adequate to recall such changes over a period of 30 to 40 years.

During the 1930's and 1940's, sheep grazed the area in the spring and statements were made that "sheep herds swept the carpet clean (and) the tortoise access to the fresh green vegetation is limited to a few days" (Woodbury and Hardy, 1948). Cattle also grazed this area in the winter. It has been stated that livestock numbers were higher at that time than at any time previously. The sheep herds are now gone and cattle graze mainly during the winter and early spring. Cattle numbers on this allotment were reduced by 50 percent in 1965, yet it is assumed by some individuals or groups that this range is still overgrazed.

An important perennial grass in this area is bush muhly (*Muhlenbergia porteri*). This grass is reported to have been more abundant in the 1930's and 1940's although there are no studies or data to support this contention. It was also reported as a primary food item for the tortoise by Woodbury and Hardy (1948). Fecal analysis of desert tortoises diets indicates that it is presently not used by the tortoise (Coombs, 1977a). If this plant is being used, it should be evident from the fecal analysis technique because of its highly fibrous structure.

Recent studies repeatedly mention filaree (*Erodium circutarium*) and red brome (*Bromus rubens*) as the primary food items of the tortoise and both of these species are introduced annuals.

There is an urgent need for better data to support the contention that bush muhly is important in the tortoise diet and that it has, in fact, decreased since the 1940's. This grass is named bush muhly because of its tendency to grow within the shrubs. It is assumed that this provides the plant protection from grazing by livestock, which it undoubtedly does, but this phenomenon is probably not due to grazing pressure alone. This species has a very brittle inflorescence which can easily become lodged within a shrub following disarticulation. The shrub can then provide a more favorable microenvironment for the establishment and growth of the grass (e.g. lower temperatures, more favorable moisture, higher nitrogen, phosphorous, and possibly other nutrients) in contrast to the interspaces between the shrubs. There is also recent evidence that bush muhly will sometimes kill the host shrub by shading the lower branches (Welsh and Beck, 1976). The death of such host shrubs is evident on the Beaver Dam Slope.

Bush muhly is a warm season grass that greens up in the spring, but flowers and produces seed following the summer rains which provide approximately one-third of the total yearly precipitation. The critical stage in the life cycle of this plant and the time it would be most susceptible to grazing damage is July, August and September. No cattle graze this area during this critical period. It is conceivable that this grass could provide an important source of water and nutrients for the tortoise at that time.

As mentioned previously, annuals are the primary forage plants for the tortoise and cattle in the spring. Observations indicate that use of perennial grasses is light when annuals are being consumed. The production of annuals in this area is dependent on winter precipitation not livestock grazing. When the annuals dry up, tortoise activity declines and summer aestivation begins (Berry, 1978)

whether or not livestock graze the area. There is also evidence that tortoise may not lay eggs on dry years (Berry, 1978) when annual production is low, indicating a dependence on these annuals.

A proposal has been made by (Coombs, 1977a) to eliminate grazing below 3,000-feet elevation after April 1 to leave annuals for the tortoise. Coombs (1974) estimates a population of 350 tortoise on the Beaver Bam Slope which he estimates will consume 8,140 pounds of vegetation over a 145-day period of activity. The range of consumption being 5,500 to 11,220 pounds per year depending on the period of activity. I have assumed there are 50 square miles of habitat on the Beaver Dam Slope where tortoise and cattle use overlaps. I have also estimated the area will produce a minimum of 100 pounds of forage per acre (a very small amount considering annual production on favorable years). From these figures, I calculate that at the level of 11,200 pounds of forage consumed per year by the tortoise, there is 285 times as much forage produced as is consumed by the tortoise. At the 5,500-pound level of forage consumption, there would be 582 times as much forage produced as is consumed by the tortoise.

It has also been proposed that a rest rotation grazing system be implemented in this area. This type of system may have a detrimental impact on this range and the tortoise because of a higher rate of utilization on the grazed pasture and the low mobility of the tortoise resulting in a forage deficiency.

Some data (Coombs, 1977a) indicates an increase in winter fat (*Ceratoides lanata*) over the past 30 years which would indicate this range is improving. However, quantitative plant data to support any significant plant changes for this area are grossly inadequate.

*Livestock impacts on dens and summer holes*

Coombs (1977a) states that the number and location of winter dens is the most significant single factor in determining the distribution and carrying capacity of the tortoise habitat in Utah. Cattle can have little or no impact on winter dens because they are located at the edge of arroyos and beneath the petrocalcic horizons.

Summer holes are used by tortoise to escape the high summer temperatures. A tortoise may have several holes within its summer range. These holes are seldom used from one year to the next and locations vary each year with new territories (Coombs, 1977a).

Cattle do not graze this area during the hot part of the year, and it is not apparent how critical these holes are during the spring when cattle are in the area.

*Trampling of tortoise by livestock*

Reference is made to an individual (Berry, 1978) who described the loss of *a* juvenile tortoise and its small burrow *presumably* by sheep in the spring. During the same spring, a small two- to three-year-old tortoise was found with a hole in its shell near a water trough which *appeared* to have been killed by sheep. I do not condone the loss of these tortoises, but these isolated instances have been extrapolated to cattle ranges and trampling of tortoise by cattle on the Beaver Dam Slope has not been documented and this implied impact is probably greatly exaggerated.

*Collection of tortoise*

The general decline in desert tortoise populations can be attributed to constant collecting by man. This is particularly true for the Beaver Dam Slope population because of its close proximity to Interstate Highway [SIC] US–91 and former service stations in that area. This problem has been largely alleviated by rerouting traffic along Interstate 15.

Selective collection could also account for the changes in sex ratios since the 1940's when the sex ratio was 64 percent female and 36 percent male to the present ratio of 30 percent female and 70 percent male (Coombs, 1974). Females tend to remain near the winter dens longer than males and are therefore, more vulnerable to collection.

The age structure of this population included 90 percent adults in the 1935–1945 period (Berry, 1976) and in 1977, was composed of 70 percent adult (Coombs, 1977a). This change could indicate that the population structure is improving.

*Impact of predation on the tortoise*

This is a factor that many wildlife biologists choose to overlook or discount as having a significant impact on the tortoise. Coombs (1974) states that predation is now a great threat to the tortoise population on the Beaver Dam Slope, and there have been many reported incidents of predation in this area. This factor is probably greater than realized because there would be little, if anything, left of a hatchling tortoise killed by some predators. Coombs (1977a) lists eight and possibly ten mammalian predators and seven predatory birds likely to harm the tortoise. He also lists several other mammals that compete with the tortoise for food and space. The kit fox and gila monster are also listed as nest and egg predators (Coomb, 1977a).

A plan that is seriously designed to protect the tortoise must certainly include some type of predator control program or at least a close evaluation of the impact of predation on tortoise survival. There is much more direct evidence that predation is a serious problem than there is for the implied impacts of livestock competition and habitat deterioration.

*Intensive study area*

A 3,040-acre (4.75 square mile) enclosure (not yet functional) has been constructed in this area by the Bureau of Land Management to exclude livestock grazing. It is my opinion that this enclosure is larger than required to evaluate this and other problems in this area, and is probably a compromise because of this critical habitat proposal. Coombs (1977a) reports that the actual area within the continuum of good tortoise habitat is only 13 square miles on the Beaver Dam Slope.

There is a serious lack of good objective data to evaluate the tortoise problem and the impact of livestock grazing. Therefore, I suggest the following studies be initiated:

(1) forage habits and nutritional requirements of the tortoise.

(2) extent of competition with livestock.

(3) vegetation changes with and without livestock grazing. This would necessitate long-term studies.

(4) predator control or predator exclusion and its impact on tortoise survival.

I will support a reasonable, carefully-considered recovery plan that will benefit this tortoise population. However, only after the above-mentioned studies, and possibly others, have been conducted and evaluated.

I am adamantly opposed to the present proposal if it seeks to eliminate livestock grazing without objective quantitative data in support of such drastic and economically-devastating action on the local cattle operators.

Dr. Darwin B. Nielsen made the following points:

I have been asked by the affected ranchers to do a study to try to ascertain some of the economic impacts that the proposed action would have on their businesses. The point at which I took off on this study was the assumption that grazing would be totally eliminated on the Beaver Dam Slope critical habitat area, which was one of the options considered in the write-up I had on this proposal.

The economic impacts presented in this statement are based on estimates of what would happen if "Option 2—No Grazing" is adopted for the Beaver Dam Slope critical habitat. Eight permittee livestockmen are involved in this proposed action. They range from fairly large ranches to rather modest livestock enterprises. Ranchers are faced with several alternative actions when grazing cuts on federal lands are imposed on them. Some of these alternatives are: (1) replace the lost grazing by leasing other land, using owned lands more intensely or feeding hay; (2) reduce herd size to fit the new seasonal mix of grazing lands imposed on them; or (3) give up on the livestock business and sell their remaining grazing resources.

The ranchers affected by this proposed action are also part of a larger group involved in the Hot Desert EIS. Substantial grazing cuts are proposed, based on the EIS, that will put increased pressures for any alternative sources of feed during the winter and spring grazing seasons. Interviews have been held with these ranchers in an attempt to determine what alternative courses of action are available to them.

Data were also collected to estimate the economic impacts of such proposed actions as the EIS and the tortoise proposal. Data gathered from these ranchers (those involved in the EIS and those involved in both the EIS and the tortoise proposal) are used to make estimates of the economic impacts of the proposed actions on the Beaver Dam Slope.

Since the proposed actions resulting from the Hot Desert EIS are in litigation at the present time, and since the resulting grazing cuts have not been made, this statement will approach the economic impacts from two points in time or two base periods: First, grazing use before any action is taken as a result of the EIS; and second, assuming proposed EIS cuts are imposed on the ranchers. An additional assumption is made that all of the ranchers stay in business.

Thus, this analysis is conservative to the degree that this assumption does not hold and ranchers do not go out of business.

*Permit Values*

Grazing permits on federal grazing lands have a value that is in part determined by local conditions relative to the supply and demand for grazing resources. The value of these permits is an intergral part of the capital structure of the ranch. When grazing is curtailed, the value of these permits is a loss to the rancher. Permit values in the Hot Desert area before the proposed actions of the EIS were reported to be about $20 per animal unit month (AUM). The estimated value of permits lost to the eight ranchers is given in Table 1. Ranchers are referred to only by number. Thus, these ranchers would have expected loss in ranch capital assets of betwen $36,000 and $20,000, depending on who gets the responsibility of the grazing cut, i.e., the EIS or the tortoise. This is a one-time loss of a capital asset not an annual cost or loss.

It was determined through rancher interviews that since so many ranchers in the area were facing potential losses of grazing during the winter and spring seasons that there was not anywhere near enough grazing available from other lands to offset this potential loss on BLM lands. The only alternative, if herd size is to be maintained, is to bring hay into the area for feeding. The estimated cost of having hay delivered into the area was $90 per ton. (The cost is probably higher this winter-spring, 1980). Hay can be converted into AUM's on the basis of about three AUM's per ton or 666 pounds of hay per AUM. At this conversion rate, the cost of replacing an AUM lost on the BLM with hay feeding would be $30 per AUM. Estimates of the cost of replacing lost BLM grazing by feeding hay (exclusive of the extra cost of feeding) are given in Table 2.

If ranchers decided to keep their herds intact by feeding hay to replace the AUM's lost, it would cost them between $54,000 and $30,000 each year. Ranchers indicated that this was too expensive an alternative, and, thus, they would not be able to do it. If one could estimate the added cost of labor and equipment required to feed the hay to the animals, this would be a very expensive alternative. This alternative also assumes hay will be available in the amounts needed.

*Annual Income Losses*

Many ranchers have only a couple of alternative courses of action as they are faced with cuts on BLM lands. They can reduce their herd size to accommodate the cut or they can give up on the system and leave the business. When grazing cuts such as the one under consideration here are imposed on a rancher, they usually only affect a seasonal range use. For example, a ranch is seasonally balanced and provides feed for 500 cows from various sources, BLM, FS, private, and state. Suppose the BLM cuts his winter grazing by 50 head for six months. If he has no alternative sources of feed for this period, he would have to cut his cow herd to 450 cows. He may be able to use his excess summer grazing with yearlings, but he could not winter cows over. Often, ranchers are caught with limited flexibility in changing the seasonal use of their rangelands. In estimating the expected income losses ranchers would suffer from BLM cuts, a seasonal balance chart was set up for each ranch before and after the cut. This allows one to visualize the adjustment problems the rancher faces. From these charts, an estimate was made of how many cows he could run after the cut, assuming no new resources (hay or other grazing) were available or affordable. Initially, estimates were made only of the decrease in ranch income as a result of the proposed losses of grazing on the Beaver Dam Slope. These estimates are shown in Table 3.

These estimates assume all ranchers run a cow-calf operation, an 85-percent calf crop, 400-pound steer calves, 375-pound heifer calves, 900-pounds cull cows, $.90/lb. steers, $.80/lb. heifers, and $.45/lb. on cull cows. An estimate of the decreases in expenses that would accompany these losses of income as the herds are reduced in size was not made because of time constraints. However, this has been done in the past on other ranch situations which would be similar to this situation. The rancher's fixed expenses go down very little, if any, in the short run. His annual variable expenses will go down, but they will not go down nearly as much as his income goes down. In fact, only a few expense items will go down. For example, grazing fees paid, property taxes on cattle, veterinarian expenses, trucking and marketing, and maybe a few others. One case studied showed income decreases of 15 percent while costs decreased by about six percent.

There is another way to approach this income loss estimate. It is reported that the tortoise-proposed action will reduce grazing by 168 head for these eight ranchers. This would reduce expected sales as follows:

| | |
|---|---|
| 168 cows × .85 calf crop = 143 calves | |
| 72 steer calves + 71 heifer calves | |
| 72 steers × 400 lbs./hd. × $.90/lb. | = $25,920 |
| 71 heifers × 375 lbs./hd. × $.80/lb. | = 21,300 |
| Total | 47,220 |

The $47,220 loss of income computed here would be comparable to Base II loss of $45,155 in Table 3.

One should keep in mind, when evaluating the magnitude or the impact of these income losses, that the net income loss comes directly out of the ranch families' living allowance. So what might seem like a rather modest impact in the county or state may be devastating for the individual. As ranches are forced to reduce herd size, they become less and less efficient in the production of food. The fixed costs are spread over fewer and fewer animals, thus, the average cost of producing beef goes up.

As ranchers' incomes are reduced, they have fewer dollars to spend in the local and state economy. As their spending is reduced, it has a multiple-effect on economic activity in the local communities and the state. Locally, this multiplier would probably be around 1.6 to 2.2; for the state, the multiplier could be as high as 4.0. This says that for every dollar reduction of income in the livestock sector, there will be a total decrease of four dollars in economic activity in the state. Thus, the total impact of an income loss of $75,730 could amount to a reduction in economic activity of $302,920 in the state.

Three commenters state that the Fish and Wildlife Service did not consult properly with local people in the St. George area. Nine comments were made that both the tortoises and cows can coexist without any more restrictions. Two letters urged thorough studies throughout the species' entire range before any designation of the population as Endangered. One comment stated that removal of livestock would not result in the sudden improvement of the range. Two comments stated that the Service had already predetermined its position on the listing. Two comments stated that the reasons for listing were not correct since they were not occurring at *present.* One individual said that the Fish and Wildlife Service does not have the constitutional authority to be making any decisions in Utah.

Finally, Mr. Frank Rowley (BLM, Utah) outlined BLM's programs while opposing the listing:

"In the proposal notice reference is made that overgrazing by livestock is one of the key factors involved in the decline of the desert tortoise population. We admit that overgrazing has been a problem in the past, but the notice has failed to recognize the steps which have been taken to correct this problem. In the last ten years, BLM has made substantial adjustments to correct livestock grazing problems. During this period, 73 percent of the cattle use has been reduced in the area (approximately) a 50 percent reduction in 1965 and approximately a 23 percent average reduction proposed in our recent decisions. Adjustments have also been made in the season of use, signficantly reducing competitive spring use, and an allotment management plan is in the process of being implemented. In 1978, the average forage production for annual brome grass and filaree was 860 pounds of air dry forage per acre. When the catle were removed in May, there was an average of 241 pounds of annual forage per acre remaining. These facts suggest that steps are being taken to reduce the impacts of livestock grazing over the area. We would also like to note that the livestockmen have cooperated with us and moved their cattle to other pastures when requested.

Not only has BLM made adjustments to livestock use, we have also proposed establishment of a 3,040-acre natural study area to enhance the desert tortoise population. This year we will let a contract to study the effects of grazing versus non-grazing so more information will be available to evaluate this problem. This area encompasses the historic Woodbury-Hardy study area and several other critical desert tortoise denning areas. It is also proposed in

the allotment management plan that grazing in the remaining portions of Beaver Dam allotment would not extend beyond April 30th.

Trampling of vegetation, burrows, and young tortoises is listed as a major concern. The allotment will be stocked at a rate of 26 acres/cow/month. Based on a six-month grazing season, 156 acres are allocated to each cow for the six-month grazing season. Based on this vast acreage, trampling is insignificant and of minor importance to the welfare and survival of the desert tortoise.

*Predation and Man*

The removal of desert tortoises by the public has subsided since the construction of Interstate 15. However, this problem has not been completely eliminated and is expected to continue, even if the desert tortoise is listed as an endangered species. We feel that this designation will hinder the present tortoise recovery program since people who knowingly violate the law may be reluctant to return the tortoise for fear of the penalties which could be imposed on them.

Off-road vehicle (ORV) use is listed as one of the major detrimental factors affecting the tortoise. The off-road vehicle use is minor, only occasional ORV use occurs, there are no resource values which have attracted ORV users into this area. Our land use plan calls for vehicles to be restricted to existing roads and trails.

As you may be aware, the effects of radioactive fallout on humans and livestock in Washington County, Utah, as a result of the atomic bomb testing in Nevada is now being investigated. Radio fallout could have affected animal populations, including the desert tortoise, in Utah, Arizona, and Nevada. This possibility should be considered.

The following is a summary of comments of those who favored the proposed listing and designation of Critical Habitat.

Three comments advocated either the complete stoppage of livestock grazing on the Beaver Dam Slope or the cessation of grazing between April and September as the best way to protect both the tortoises and the land. Three commenters agreed that the population has shown declines since it was first studied in 1936. There were 23 comments which supported the listing with Critical Habitat for the reasons provided in the various Federal Register documents.

Two statements gave opposition to the State's proposal to the release of captive tortoises on Beaver Dam Slope and cited reasons why uncontrolled release is biologically unjustified. Two comments cited collection as an important factor in the decline of the tortoise population, especially since people may be unaware of the State's collecting prohibitions.

Two persons cited habitat destruction as a major cause of the tortoise's decline. One of those, Dr. Ross Hardy, who conducted the original studies on this population, states:

On page 87 of my monograph on "The Influence of Types of Soil Upon the Local Distribution of Some Mammals in Southwestern Utah" (Ecological Monographs, Vol. 15, No. 1, Jan. 1945) I included a count of the number and kinds of perennial shrubs as well as measurements (height x width) on "quadrat 9" in this area. Since then (measured in the summer of 1941) there has been an easily noticeable and measureable decline in the *number* and *size* of these shrubs as well as in the amount of perennial grass present in this area. Without doubt the *destruction of habitat* is one of the chief if not the main cause of the tortoise decline.

One comment strongly disagreed with the State's request for more time to study the matter saying that enough information is already at hand on which to make a judgement. Four individuals cited overgrazing as a specific cause of the tortoise's decline. One comment noted that predation may account for as much as 35% mortality among tortoises. One comment stressed that the State of Utah has not emphasized patrolling the tortoise habitat although he did mention that the State is short of funds and manpower for tortoise work.

One commenter, Mr. Eric Coombs, stated that the destruction of palatable shrubs such as Mormon tea and winterfat may be more important than that of creosote bush. He further states:

Also, the trampling of forage is portrayed in a low key when I believe that in case of competition and removal of vegetation presently critical to tortoise survival, that the affects of trampling are higher than that of direct removal as forage. The removal of perennials is a long-term problem, whereas the trampling of important forbs and annual grasses during the critical spring feeding period is the major concern.

Three persons stated that the historical and scientific value of the Beaver Dam Slope population cannot be overstressed. One commenter believed that the populations of tortoises in the hills north of St. George and in Paradise Canyon did not result entirely from introduction of captives and therefore should be included under provisions of the Act. Two individuals commented on work being conducted in nearby areas in Arizona and Nevada and, while agreeing with the proposed rule, stressed that population surveys in other areas are urgently needed.

One commenter advocated the closure of the area to all off-road vehicle (ORV) use and another stressed that ORV's must be monitored especially during certain times, such as on holidays. One comment stressed the importance of the Beaver Dam Slope as a biological transition area harboring many interesting plants and animals. Two individuals believed that the State's efforts or those of BLM are inadequate to protect the Beaver Dam Slope population of the desert tortoise.

Finally, the Desert Tortoise Council submitted a long letter discussing the tortoise and its management:

*Allotment Management Plan (AMP)*

The AMP was drafted in 1976 and revised in March, 1977. It is stated in the AMP (p. 7) that current livestock forage conditions, based on desirable forage studies, are in fair condition over 47 percent of the allotment and in poor condition on 53 percent of the area. It further states that all areas rated as poor can be improved to fair condition except Beaver Dam Wash. No areas have been rated as good and none can be improved to a good forage condition. Large washes receive heavy grazing, and the range condition trend there is downward.

The AMP states that annual species are grazed each year during the growth period and that annual grazing does not allow for the necessary rest required by perennial plants to restore vigor and produce seed (p. 13). Further, "during the spring one sheep herd trails through the middle of the desert tortoise area located in the lower half of the allotment."

None of the documents sent to the Desert Tortoise Council address sheep grazing, except for the above quote taken from the draft AMP. The grazing pressure exerted by sheep is quite different for cattle. Sheep will essentially eat all desirable plants to the ground surface level, essentially denuding an area of desirable forage as they move through it. Since no mention is made to their control, the Council is concerned that sheep are not being regulated on the Beaver Dam Slope.

Reproductive success has long been well recognized as too low on the Beaver Dam Slope to sustain the tortoise population (Woodbury and Hardy, 1948; Coombs, 1974, 1977 a and b). This point is also discussed in the AMP, "the excessively heavy grazing of livestock on the area over the past 80 years suggests a nutritional problem, but available evidence is not conclusive. Other possible causes include an inadequate number of mature females, excessive predation on eggs and young, and human disturbance."

The Plan proposes to use *Ephedra nevadensis* and *Muhlenbergia porteri* as indicators of range improvement, for, "by meeting the physiological requirements of these two species, the requirements of the other desirable forage species can be met to the fullest extent possible." It is questionable that by meeting the physiological conditions for growth and vigor of *Ephedra* and *Muhlenbergia* (2 out of every 3 years) will necessarily meet the conditions for many other forage species. Moreover, under the proposed 3-year rest-rotation grazing schedule, grazing will be permitted on the Beaver Dam Slope every third year through April, yet it is indicated that *Ephedra* begins growth at the beginning of March and *Muhlenbergia* in early April. Grazing will thus overlap with the onset of the growth period and thus will in turn adversely affect attempted range improvement.

If cattle are present on the Beaver Dam Slope through April, then the tortoise will be directly competing with livestock when the tortoise emerges from the hibernaculum during March. Further, managing a range for perennial species fails to address specific annual species requirements of the tortoise. For example, in his letter to the U.S. Fish and Wildlife Service in response to the public meeting (letter of January 10, 1980), Mr. Rowley states that in 1978, 840 pounds of air dried forage (brome grass and filaree) were produced per acre, and that after the livestock were removed, 241 pounds remained. Specifically not mentioned is the amount of forage produced on dry years and on average years, for 1978 was an unusually wet year. Further, the AMP does not discuss how the range will be managed during dry years. Cattle grazing during dry years will essentially preclude the availability of required forage for the desert tortoise.

Mr. Rowley states, that regarding the leaving of 241 pounds per acre of forage available to the tortoise, "These facts suggest that steps are being taken to reduce the impact of livestock grazing over the area." We have not seen data to substantiate this statement. 1978 was not a typical year for it was very wet, and we were not supplied data from 1977 or 1979 for comparison, thus we cannot determine if the range is being managed for the tortoise. The desert tortoise has evolved a survival strategy adapted to existing ecological conditions. If nutrition plays a role in this tortoise population's decline, as indicated in the literature (Woodbury and Hardy, 1948; Hardy, 1976; Coombs, 1974, 1977 a and b; and Hohman and Ohmart, 1978), reduction of the spring annual food source by 72 percent once every three years does not appear consistent with the objective of improving conditions for the tortoise. Livestock concentrate near washes and areas where forage is most abundant. If forage conditions are good in or near the areas of high tortoise concentration, the reduction of cattle to 26 acre/cows/month, or 156 acres allotted to each cow over a 6-month grazing period (as outlined in Mr. Rowley's letter), will not make more forage available to tortoises in these areas or increase space for them to avoid being trampled.

*Range Conditions*

The range data sheets supplied to the Desert Tortoise Council cover the period from about 1963 to 1977. Range trend index sheets for the various allotments on the Beaver Dam Slope were evaluated by a range scientist, and it is impossible to draw any conclusion from them. Trend indices were plotted using species cover values only; factors important to determining range condition change such as annual and seasonal precipitation, temperature ranges, soil types, etc. were not taken into account. Thus, the data do not support, or refute for that matter, the supposition that the range is being managed for the tortoise.

BLM records indicate a history of grazing problems on the Beaver Dam Slope, e.g.:

1. A notice from the BLM to licensees, dated April 16, 1958, called a meeting, "to discuss management problems in the Beaver Dam Slope area."

2. Minutes of a BLM and Cattlemen meeting (December 7, 1964) state, "It was agreed by all livestock owners that something be done to control cattle use in the Beaver Dam Slope allotment."

Although these conditions were recognized at least as early as 1958, the data do not indicate a significant improvement in range conditions since that time.

Individual range data sheets indicate that plots range from fair to poor condition. Little of the data appear to be applicable to desert tortoise forage conditions and requirements. Many of the data sheets indicate that forage species reproduction was poor and grazing pressure was cited as moderate to heavy. Several sheets from the Indian Springs allotment indicate that, "most of the plants of undesirable composition," reproduction was fair, past grazing as heavy and present grazing as moderate and occasionally heavy.

Similar assessments are cited in the Castle Cliffs, Beaver Dam and Santa Clara allotments.

*Draft 1980 Beaver Dam Slope Habitat Management Plan*

"The overall goal of the Beaver Dam Slope Habitat Management Plan is to improve and protect wildlife with species emphasis on stabilizing and improving the declining Beaver Dam Slope desert tortoise population."

In recognition of the above need, the HMP states that the tortoise population, "is only 10–20 percent of the level of 35 years ago and has nearly stopped reproducing." The HMP's objectives include:

1. stabilize the Beaver Dam Slope desert tortoise population and increase the population growth rate at least to 5 percent per year;

2. study and manage for the desert tortoise, in part by establishing the "Woodbury Desert Study Area" of 3040 acres.

The objectives are commendable and represent a positive step. However, the 3040 acre natural area is only 14 percent of the proposed 35 square mile critical habitat identified by the Desert Tortoise Council. This 3040-acre area is totally inadequate as a tortoise protection area. It will serve, however, as a research enclosure for determining range improvement in the absence of livestock.

We are also concerned that the BLM has proposed predator control as a means to protect the tortoise. We do not believe that predator control is a justified means to reducing predation on tortoises. The predator control proposal indicates a less than full understanding of ecological principles and is a less than solid biological approach to managing the tortoise population on the Beaver Dam Slope.

In his letter to the U.S. Fish and Wildlife Service, Mr. Rowley stated that in the last ten years the BLM has made substantial adjustments to correct livestock grazing problems. "During this period, 73 percent of the cattle use has been reduced in the area (approximately 50 percent in 1965 and 23 percent is proposed)." Clearly, this statement is self-contradictory. Only a 50 percent reduction has been achieved. The rest remains to be accomplished. Also, the range data sheet of this same period (1967) submitted to the Desert Tortoise Council states, "Soilstable; reproduction-light to poor; evidence of grazing-heavy to moderate; trend static." Additionally, Coombs (1974, 1977 a and b) indicated poor range conditions with significant competition between cattle and desert tortoise. Coombs (1974) also states that the tortoise population was still declining by 5–7 percent per year. Thus, the biological data do not indicate that the steps taken by the BLM have been effective measures for managing the tortoise population.

The Council fully supports the desert tortoise studies to be funded by the BLM, but the study itself will not reverse the downward trend of the population.

Mr. Rowley stated several additional objections to the listing of the Beaver Dam Slope population as endangered. These are addressed below.

1. "We feel that this designation will hinder the present tortoise recovery program, since people who unknowingly violate the law may be reluctant to return the tortoise for fear of the penalties which would be imposed on them."

The Council is not aware that Utah BLM has a recovery program. Further, this statement assumes (1) tortoises cannot be returned without penalty, and (2) people will not be informed about how to properly deal with captive tortoises. While this may be of concern to the BLM, the answers to this concern may be very effectively dealt with in a recovery plan.

2. "Off-road vehicles (ORV) use is listed (in the proposal) as one of the major detrimental factors affecting the tortoise. Off-road vehicles use is minor, only occasional ORV use occurs. There are no resource values which attract users into this area."

To quote the draft AMP, "Dominant recreational uses in the allotment are sightseeing, rockhounding, wildlife and botanical observations, and jeeping and other ORV use. Overall use appears to be light. The main use being in the spring and fall."

3. "Radioactive fallout could have affected animal populations including the desert tortoise in both Utah, Arizona and Nevada. The possibility should be considered."

The Council does not see this as anything other than speculation. Neither a case for this suggestion nor any data to support it were presented by the BLM. Attempting to answer such a statement is difficult, as often the case can neither be proved or disproved. As stated by Turner, Rowland and Wood (1966), "in evaluating the influences of nuclear engineering, one must consider the merit of seeking to prove or disprove the existence of nuclear engineering products—remembering that statistically significant effects may have no discernible influence on the organization of a community of plants and animals."

Perhaps the most poignant point here is that Woodbury and Hardy (1948) cite the detrimental effects of livestock competition for forage as being detrimental to the desert tortoise years prior to the nuclear testing in Nevada.

4. "There are no definitive data substantiating the reasons for the population decline."

During their 1934–1945 study period, Woodbury and Hardy (1948) recognized livestock grazing pressure and competition as contributing to the Beaver Dam Slope tortoise population decline. Coombs (1974, 1977 a and b) and Hohman and Ohmart (1978) have also reviewed cattle competition with Beaver Dam Slope cattle and tortoise. BLM records indicate that they were also cognizant of range condition problems, at least during the 1950's and 1960's. Mr. Rowley states in his letter that significant reductions in livestock grazing have taken place in the last ten years. However, Coombs (1974, 1977 a and b), shows clearly that the tortoise population on the Beaver Dam Slope continued to decline during the early 1970's.

Many studies have demonstrated that competition between range cattle and native wildlife is detrimental to wildlife. This subject is addressed in papers on the desert tortoise (Woodbury and Hardy, 1948; Coombs, 1974 and 1977 a and b; Berry, 1978; Ohmart and Hohman, 1978). It is difficult to cite conclusive data that grazing competition is the only cause of the tortoise population decline. However, it is more difficult to say that it is not a major causal factor.

5. "The area identified as critical habitat is much larger than that actually occupied by the tortoise."

The proposed 35-square mile critical habitat is inhabited by the desert tortoise. Review of Coombs (op. cit.) show that 6 or 7 areas of tortoise concentration occur within the proposed critical habitat. The BLM data and records supplied to the Desert Tortoise Council contain no data to support Mr. Rowley's statement; it is in fact incorrect.

## Discussion and Conclusions

The Service would like to thank all those individuals and organizations that either submitted comments or attended the public meetings and hearings on the proposed rule. It is evident that many people spend a great deal of time in gathering data and preparing a response. All comments have been carefully considered before making a decision; the Service has complied with all requirements of NEPA and Executive Order 12044, as well as those of the Act and its amendments, in making its decision. Much of the evidence presented is contradictory with other evidence supplied during the rule proposal process; this makes a decision difficult but this determination will provide for the best protection of the tortoise and its habitat without imposing undue economic hardship on the ranchers who use the Beaver Dam Slope. The Service will cooperate fully with all parties to minimize the potential impacts of this listing.

Many individuals believed that the tortoise population throughout its range should be assessed either prior to or in addition to a determination of status for the Beaver Dam Slope population.

On August 23, 1978, the Service published a notice of review in the Federal Register to the effect that a review of the status of the tortoise throughout its range was being conducted (43 FR 37662). Accordingly, the States of Arizona, California, Nevada, and Utah, officials in Mexico, other U.S. government agencies, particularly BLM, and scientists familiar with the species were contacted and requested to supply information pertaining to the tortoise. This review is nearly completed and indicates that the tortoise is facing many threats to its continued survivial throughout its range. The Service hopes to have the review completed early this winter and will then decide if sufficient data exist to on Endangered under provisions of the Act. The Endangered Species Act Amendments of 1978 impose a two-year deadline on proposals for Endangered or Threatened warrant a proposal as either Threatened status. The Service has therefore decided to proceed with the listing of the Beaver Dam Slope population now rather than let the proposal expire and repropose the population when substantial new information can be obtained.

While the Service recognizes that the Beaver Dam Slope population is not taxonomically distinct, it believes that it is important with regard to its historical preeminence in turtle ecological studies, the fact that it is the northernmost population of the *G. agassizii,* and that it inhabits an area of unique faunal and floral assemblage. As stated in the introduction, this population has been studied beginning in 1936 and studies continue at present. It is one of the longest studied vertebrate populations, with several individuals marked by Woodbury and Hardy reportedly still being present. Thus the population is, important historically in the field of ecological studies. The population is also important since other population studies on the desert tortoise have been undertaken relatively recently; thus the Beaver Dam Slope population serves as a source of baseline information with which to compare more recent findings. The data from the population also provide one of the clearest examples of the result of overcollecting on the population structure and status of tortoises, which are under threats from trade in many parts of the world. The Beaver Dam Slope population inhabits a transition zone between southerly fauna and flora and those of more northerly areas. Thus the ecosystem is distinct. While there are washes which connect the Utah part of the slope with that in Arizona, the low bagility of tortoises in this rocky and wash disected area probably precludes any appreciable gene flow. Indeed, gene flow between populations would be very difficult, if not impossible, to demonstrate. Thus the population may be considered distinct.

Some individuals questioned the impact of cattle on the tortoise population. The Service recognizes that there is conflicting evidence on this question (see comments particularly by Dr. Bowns and the Desert Tortoise Council, as well as information contained in Berry (1978), Coombs (1977a,b,c, 1979), and Hohman and Ohmart (1978), for evidence on the effects of grazing on tortoises). The information in the above references forms the basis of the Service's contention that grazing may have a negative impact on tortoise populations. However, the Service believes that the steps already taken or proposed by BLM to reduce grazing between April and September can minimize potential competition for food resources. The Service believes that the impacts of cattle on tortoise populations should be carefully monitored to determine how much impact there may be and methods to reduce it. The Service also notes that a determination of Critical Habitat does not automatically have the effect of eliminating or reducing grazing in this area (see below).

The Service recognizes that predators may be impacting tortoise populations, especially the young. However, tortoises and predators have evolved together long before man introduced additional pressures on the population; a predator removal program should only be considered after careful evaluation of alternatives. The Service acknowledges that the collection of tortoises as pets prior to the completion of I–15 may have been a major cause of the decline in this population. Although the problem seems to have been alleviated by the highway rerouting and State laws against collecting, collection may still be a problem at least occasionally (see Mr. Rowley's comments).

There has been substantial information presented that the habitat of the Beaver Dam Slope has suffered in the past (see Coombs references, Mr. Rowley's letter, Desert Tortoise Council's comments). Grazing allotments were reduced by 50 percent in 1965 and sheep no longer graze the Beaver Dam Slope (but see the Desert Tortoise Council's comments). However, contrary to some statements, the BLM has not reduced grazing by 73 percent. The additional 23 percent is a proposed reduction which has not yet been implemented (such proposal is presently in litigation). It is hoped that the measures proposed by BLM (some of

which have been implemented) since the original proposal appeared in 1978 will allow for continued use of the area by livestock and allow the range to recover. However, as one commenter noted, there will be no sudden improvement; the Slope will have to be carefully monitored for many years to come.

The Service acknowledges that annuals are an important food supply of tortoises, especially in years of adequate rainfall. The production of annuals is a complex interaction of proper rainfall, temperature, and general range conditions, and cannot be attributed solely to cattle grazing. Cattle grazing may in some circumstances and in some years lead to an increase in annuals. However, it has not been demonstrated that this is in practice happening on the Beaver Dam Slope on a yearly basis, much less that the tortoise will or has benefited. The Service notes that there is extensive overlap (37 percent) in the foods used by tortoises and cattle.

The Service acknowledges that ORV use is not a major factor in the decline of the tortoise on the Beaver Dam Slope. As long as ORV's are strictly confined to well defined roads in this area, with appropriate warnings to users to be careful to avoid tortoises, there should not be any significant mortality. This situation must be carefully monitored.

The Service acknowledges that drought might affect the status of the population. In fact, it might enhance problems caused by grazing abuses in the past, collection, predation, and general habitat deterioration.

The Service believes that there is substantial information to document the decline of this population as well as the reasons it has declined. The Service acknowledges that no one factor is probably involved. Consequently, before recovery of this population can be effected, additional research on individual factors as well as their interaction is needed. Almost no one doubted that the population has suffered a serious decline. The Service does not believe that it would be in the best interests of the tortoise to delay listing until every facet of its biology is known. The Act requires that the best available biological and commercial data be used to determine whether a species should be listed. The Service has examined all data with regard to this population and believes that the population has declined in numbers to the point where listing it under provisions of the Act is warranted. Solutions to reverse the declining status of the tortoise should not take the course of simple notions (i.e., "kill all predators" or "prevent all grazing"). A recovery program must be developed that recognizes the needs of the tortoises and the economic concerns of the eight ranchers that depend on the Beaver Dam Slope for winter range. Interaction between the local community and concerned scientists is the best way to preserve the Beaver Dam Slope ecosystem. Immediate research and recovery programs would not, however, be delayed before a recovery plan could be started. A recovery plan would serve as a future guide to efforts needed to maintain the population.

The Service rejects the idea that tortoises are dependent on cattle to maintain their population size. The idea that when cows were abundant, tortoises were abundant so therefore tortoises are dependent on cows is not supported by biological data. Tortoises existed at higher population densities throughout the Southwest long before cattle were introduced.

There were some comments about the desirability and effectiveness of determining Critical Habitat. The Service points out that the Endangered Species Act Amendments of 1978 require that all proposals to list species as either Endangered or Threatened must also contain "to the maximum extent prudent" a determination of Critical Habitat at the time of final listing. The Service believes that Critical Habitat must be included with this final rule to comply with the amendments and the intent of Congress.

Most of those who spoke in opposition to the proposal did not seriously question the status of the Beaver Dam Slope population of the desert tortoise or the potential for its continuing decline. Instead, they voiced concern at the impact of the designation of Critical Habitat on their activities and future use of the Beaver Dam Slope for winter grazing. Actually, there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely effect the species. Indeed, no activity is automatically excluded. This point is not well understood by much of the public. There is widespread and erroneous belief that a Critical Habitat designation is somewhat akin to the establishment of a wildlife refuge and automatically closes an area to most human uses. A Critical Habitat designation applies only to Federal agencies, and is an official notification to these agencies that their responsibilities under Section 7 of the Endangered Species Act are applicable in a certain area.

While the Service acknowledges BLM's steps to set aside a 3,040-acre preserve, the Service also notes that the preserve has not actually been set up because of pending litigation. Therefore, there are no assurances that the preserve will ever become a functioning reality. In any case, the preserve encompasses only the Woodbury-Hardy study area and an additional small area. The final Critical Habitat includes all major tortoise concentrations on the Beaver Dam Slope. A 3,040-acre preserve would only protect one concentration of tortoises with perhaps fewer than 50 females and is therefore too small an area of land to form an ecological unit meeting the needs of the majority of tortoises on the Beaver Dam Slope.

The Service wishes to emphasize that it will work in close cooperation with any agency to minimize impacts of the present rules on future activities in the Beaver Dam Slope area. No automatic limitations are imposed by a designation of Critical Habitat. It does, however, assist Federal agencies in insuring that their actions are not likely to jeopardize the continued existence of the species (Schreiner, 1976).

The Service is also concerned about harm to the tortoises by misguided individuals who do not understand the final rule and may be tempted to harm them in retaliation. The Service hopes that such individuals will not harm defenseless animals but warns that penalties for harming a Threatened species can be quite severe and will be enforced.

The Service points out that there are no provisions in the Act for designations of "crucial" habitats or "sensitive" species. In addition, in a lengthy letter to Dr. Kristin Berry (dated March 7, 1979), Mr. Coombs states:

> I do not think that Endangered Status is a panacea in itself, but it is a great step in the right direction in forcing State and Federal agencies to function in behalf of the tortoise and its habitat, instead of livestock interest. Also, money will be available to do something, which is the UDWR's problem and weak excuse. Biologists with good qualifications could then do the work instead of UDWR's force of summer temps, who are not fully trained or acquainted with such important management and study techniques as would be needed to study and manage an endangered K-selected species on such a large scale.

The Service has no reason to doubt the motives or professional standing of the scientists in the Desert Tortoise Council. The Service notes that all decisions must be based solely on the best biological or commercial data available. Any person or group may petition the Service to list a species under provisions of the Act. During the review and proposal process, the Service solicits pertinent biological and

commercial data from the entire public, not any one particular group.

The Service acknowledges that the trampling of young tortoises is a possibility and may not be significant in the decline of the Beaver Dam Slope population. The Service also recognizes there is no proof to the contrary.

The Service agrees that the uncontrolled release of captive tortoises to the Beaver Dam Slope could be detrimental to the population and probably does not allow significant survivorship of the released captives. Before tortoises should be released there should be a thorough examination by a veterinarian for disease, knowledge of the origin of the captive, and knowledge about the population structure and carrying capacity of the environment where the captive is to be released. Even in California, where these requirements are met, release programs have been met with limited success.

The Service has examined Dr. Nielsen's comments on the potential economics of closing grazing on the Beaver Dam Slope. His work essentially arrives at the same results as Rice et al. (1979), though by a different method. The Service points out, however, that closing grazing is not being considered by BLM and the Service does not have the authority to prevent grazing on BLM land. In any case, permits are available to prevent undue economic hardship for a specified period of time.

After a thorough review and consideration of all the information available, the Director has determined that (1) the Beaver Dam Slope population of the desert tortoise is likely to become an Endangered species throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act, as specified in the proposal of August 23, 1978 (43 FR 37662–37665), and revised in this listing document (see below) and (2) listing this species as Threatened with the specific Critical Habitat will, with appropriate measures undertaken by the State of Utah and BLM, provide it with necessary protections to ensure its survival.

The summary of factors affecting the species, as required by Section 4(a) of the Act and published in the Federal Register of August 23, 1978 (43 FR 37662–37665), is revised below to take into account the information received by the Service since that date. These factors are as follows:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*—The Beaver Dam Slope has had a long history of overgrazing, especially prior to the mid 1960's before grazing was reduced by fifty percent. Although both sheep and cattle have grazed in the past, presently only cattle are using the range. Overgrazing modified the habitat, especially by the reduction of the availability of perennials and native vegetation, particularly Mormon tea and winterfat. The BLM has proposed an additional grazing reduction of 23 percent and eliminating grazing between April and September, both of which should aid in recovery of the range. It will take a long time to recover and must be carefully monitored. Livestock occasionally may collapse summer burrows and may inadvertently step on young tortoises, although the extent to which these contribute to the declining status of the population is in need of more study.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—Collection of individuals for pets is thought to have had severe effects on the population in the past, especially since females were reported to be collected more than males because they are sedentary and easier to find than males. Many individuals believe that this is the chief cause of the present status of the population. Collection is probably not a major problem at present although any removal not in connection with conservation efforts would probably be detrimental.

3. *Disease or predation.*—Predation by natural or feral animals, such as coyotes, kit foxes, and bobcats, may be contributing to the decline of the population, especially as it effects eggs and young tortoises, both of which are very vunerable. Many individuals believe that this is a major factor in the decline of the population although more research is needed to fully assess the problem.

4. *The inadequacy of existing regulatory mechanisms.*—While both the State of Utah and the Bureau of Land Management have regulations protecting the tortoise, they have not been sufficient to halt the decline in the population. By listing the tortoise as Threatened, present State and BLM regulations will be strengthened.

5. *Other natural or manmade factors affecting its continued existence.*—Competition for food items between tortoises and cattle may be contributing to a decline in this population, although as many ecologists have noted, competition is extremely difficult to prove. Competition may be direct (for food items) or indirect (in terms of adequate diet needed for successful reproduction). Dietary overlap is as high as 37.5 percent between cattle and tortoises based on fecal samples. The measures proposed by BLM for managing the Beaver Dam Slope, if implemented, should eliminate serious competition in the future.

### Critical Habitat

The Act defines "Critical Habitat" as (1) 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 geographic 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 believes that the area proposed as Critical Habitat and which contains the majority of the tortoises on the Beaver Dam Slope, should be designated as Critical Habitat. The tortoises are vulnerable to a variety of threats, as discussed above and in the summary of comments. Because the status of the tortoise has resulted from a variety of interacting causes related to the management of the Beaver Dam Slope, the physical and biological features of this 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. The estimated impact on grazing should not exceed $54,000 which is not significant regionally or nationally but may cause a substantial impact upon the income of eight ranches. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this action.

### Effects of this Rule

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 the 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 an "agency action") is not likely to

jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification 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.

This rule now requires Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of the Beaver Dam Slope population of the desert tortoise, but also to insure that their actions do not result in the destruction or adverse modification of this critical habitat. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any rule which determines critical habitat be accompanied 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 this species.

1. Unregulated grazing could seriously affect the tortoise population because of habitat destruction and competition for resources which would result.

2. Unregulated use of ORV's could lead to the destruction of burrows and forage needed by tortoises and also result in the direct killing and maiming of tortoises.

3. The placing of pipelines, transmission lines, and mining operations without consideration of their impacts on the tortoise population could jeopardize tortoises and lead to a further decline in the population's status.

The above three examples are provided as illustrations of the types of activities which may be detrimental to the physical environment of the Beaver Dam Slope population of the desert tortoise Critical Habitat. They are not necessarily examples of what is actually happening at the area listed as Critical Habitat.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations referred to above, which pertain to threatened species, are found at Section 17.31 ot title 50, and are summarized below.

With respect to the Beaver Dam Slope population of the desert tortoise, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.31, would apply. 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 this species in interstate or foreign commerce. 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.

Regulations published in the Federal Register of September 26, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

## Effect Internationally

The Service will review the status of the Beaver Dam Slope population of the desert tortoise to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon Appendix I to that Convention (all tortoises, genus *Gopherus*, are on Appendix II already), and whether it 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 to this rule is Dr. C. Kenneth Dodd, Jr., 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 Order 12044 and 43 CFR Part 14.

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## Regulations 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 | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Tortoise, desert | *Gopherus agassizii* | U.S.A. (Utah, Arizona, California, Nevada); Mexico. | Beaver Dam Slope, Utah | T | | 17.95(c) | NA |

2. Section 17.95(c) is amended by adding the following Critical Habitat description after the Critical Habitat description for the Plymouth red-bellied turtle:

**§ 17.95 Critical Habitat—Fish and Wildlife.**

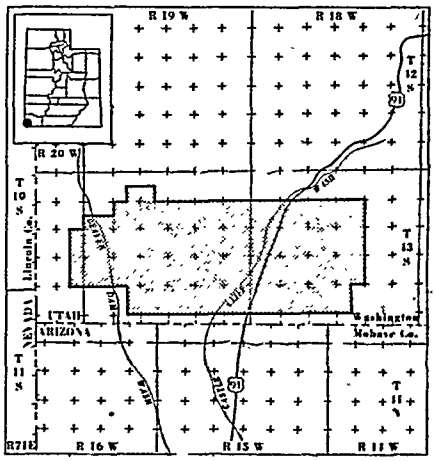
* * * * *

(c) *Reptiles.*

**Beaver Dam Slope Population of the Desert Tortoise (*Gopherus agassizii*)**

*Utah.* Washington County. E½ Sections 13 and 24, T43S R20W; S½ Section 7, all of Sections 8 through 28, E½ Section 29, SE¼ Section 5, SW¼ Section 4, T43S R19W; all of Sections 7 through 10, 15 through 22, 28 through 30, and W½ Section 27, T43S R18W.

*Beaver Dam Slope Population*




Dated: August 14, 1980.

Lynn A. Greenwalt,

*Director, Fish and Wildlife Service.*

[FR Doc. 80-25316 Filed 8-19-80; 8:45 am]
BILLING CODE 4310-55-M

Federal Register

Wednesday
August 20, 1980

Part V

# Office of the United States Trade Representative

## Generalized System of Preferences; Acceptance for Review of Petitions To Modify the List of Articles Receiving Duty-Free Treatment; Public Hearings; Timetable

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP); Acceptance for Review of Petitions To Modify the List of Articles Receiving Duty-Free Treatment; Public Hearings; Timetable

**I. Deadline for Receipt of Request To Participate in the Public Hearings**

Requests to present oral testimony in connection with public hearings announced in 45 FR 36243 (May 29, 1980), accompanied by twenty copies in English of all written briefs or statements should be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee (TPSC), Room 711, Office of the United States Trade Representative, Washington, D.C. 20506, not later than the close of business Thursday, September 18, 1980. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations. All such requests to appear and accompanying briefs or statements must conform to the regulations codified at 15 CFR Parts 2001–2003 and 2007. Part 2007 was published in the September 9, 1977 Federal Register, 42 FR 45532. Rebuttal briefs or statements will be accepted if submitted in twenty copies in English within one week after the close of the hearings (but in no case later than close of business, Friday, October 10, 1980).

Parties not wishing to appear at the hearings also may submit written briefs or statements in twenty copies in English in connection with articles under consideration in the public hearings, provided that such submissions are filed by October 10 and conform with the regulations cited above.

**II. Notice of Public Hearings**

Hearings will begin at 10:00 a.m. on Monday, September 29th in Room 2008 of the New Executive Office Building (entrance on 17th Street between Pennsylvania Avenue and H Street, N.W.), Washington, D.C., and will continue on that and subsequent days until all witnesses have been heard. It should be noted that the hearings of Friday, October 3, previously scheduled in Room 2010 of the New Executive Office Building, are now moved to Room 2008.

*1. Acceptance of petitions for review*

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the Generalized System of Preferences (GSP) as provided for in Title V of the Trade Act of 1974 (88 Stat. 2066–2071, 19 U.S.C. 2461–2465). These petitions have been submitted, and will be reviewed, pursuant to regulations codified at 15 CFR, Part 2007 (42 FR 45532, September 9, 1977).

As part of this and future product reviews, a special effort will be made to include on the GSP list products of special export interest to low income beneficiaries, including handicraft items. In addition all requests to add or remove products to or from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with a new "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more developed beneficiary developing countries in specific products where it is determined that they have demonstrated international competitiveness. This approach will help to ensure that a greater share of GSP benefits is reserved for less competitive beneficiaries. The development level of individual beneficiaries, their competitive position in the product concerned and the overall economic interests of the United States will be taken into account when any such action is considered. Demonstration of import sensitivity in the context of GSP is necessary to effect the removal of any beneficiary developing country from GSP eligibility with respect to a specific product already eligible or from proposed GSP eligibility with respect to a petition requesting the designation of an item.

Product designations announced at the conclusion of the review process, therefore, may be made on a differentiated basis. This means that certain beneficiary developing countries may not be designated for GSP benefits in certain products even though those beneficiaries are not excluded statutorily under the competitive need provisions. Similarly, with respect to product removals, the President may elect to withdraw GSP benefits from certain beneficiaries rather than remove the product entirely from GSP coverage. In determining the eligibility of particular beneficiaries with respect to any product, the President will take into account the three criteria specified above. The competitive need limitations (provided for in Section 504(c)(1) of the Trade Act of 1974) will continue to apply to countries remaining eligible for GSP treatment.

The implementation of this policy is designed to provide increased opportunities for less developed, less competitive beneficiary developing countries. In accordance with overall U.S. trade policy toward developing countries, this action is designed to promote continued graduation of more advanced developing countries from GSP benefits in products where they have demonstrated competitiveness. Over time such action should help to provide a more equitable distribution of GSP benefits by shifting more of the benefits to the less competitive developing countries.

For additional information on this policy, reference should be made to the Report to the Congress on the First Five Years' Operation of the U.S. Generalized System of Preferences (GSP), transmitted by the President of the United States on April 17, 1980, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

*2. Information Subject to Public Inspection*

Information submitted in connection with the hearings will be subject to public inspection by appointment with the Executive Director of the GSP Subcommittee of the TPSC, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. It is requested that parties submitting briefs or statements containing confidential information indicate on the cover page of each of the twenty copies submitted that such confidential material is enclosed.

The hearings will be open to the public, and transcripts of the hearings will be made available for public inspection or purchase from the reporting company.

*3. Solicitation of Public Views*

The TPSC invites submissions to be made in support of or in opposition to any petition contained in Annex I of this notice. Such submissions should, however, conform to 15 CFR 2007.0, 2007.1(1), 2007.1(2), and 2007.1(3) (42 FR 45532, September 9, 1977).

*4. Communications*

All communications with regard to these hearings should be addressed to: Secretary, GSP Subcommittee, Office of the United States Trade Representative, Room 711, Washington, D.C. 20506. The telephone number of the Secretary of the GSP Subcommittee is 202–395–6971. Additional questions also may be directed either to Tim Bennett, Executive Director of the GSP Subcommittee, or Melissa Coyle, Assistant Executive Director.

Acceptance for review of the petitions listed in Annex I does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be formally adequate as bases for reviews by the GSP Subcommittee and the TPSC, and that such reviews will take place.

BILLING CODE 3190-01-M

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | [The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.] | |
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences | |
| | | Fish, prepared or preserved in any manner, not in oil, in airtight containers: | |
| | | Sardines: | |
| | | In containers weighing with their contents not over 15 pounds each: | |
| | | [In immediate containers weighing with their contents under 8 ounces each] | |
| 80-1 | 112.22 pt. | In immediate containers weighing with their contents 15 ounces each, in tomato sauce | Toluca Corporation, Salt Lake City, UT |
| | | Tuna: | |
| | | [In containers weighing with their contents not over 15 pounds each, for an aggregate quantity entered in any calendar year not to exceed 20% of the United States pack of canned tuna during the immediately preceding calendar year, as reported by the United States Fish and Wildlife Service] | |
| 80-2 | 112.34 | Other | Government of Malaysia, Government of Morocco |
| | | Fish, prepared or preserved in any manner, in oil, in airtight containers: | |
| | | Sardines: | |
| | | Valued over 30 cents per pound (including weight of immediate container): | |
| 80-3 | 112.86 | Skinned or boned | Government of Peru |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | |
| | | Other cheeses, and substitutes for cheese: | |
| | | [Cheeses made from sheep's milk] | |
| | | Other: | |
| | | Valued over 25 cents per pound: | |
| | | [Colby] | |
| | | Other: | |
| | | [Cheese and substitutes for cheese, whether or not in original loaves, containing or processed from Romano, Reggiano, Parresano, Provoloni, Provolette, Sbrinz, and Goya, all the foregoing made from cow's milk] | |
| | | Other: | |
| | | [Provided for in item 950.07; provided for in item 950.08A; provided for in item 950.08B; provided for in item 950.08B; provided for in item 950.10A] | |
| | | Other: | |
| | | Of the type provided for in item 950.10D: | |
| | | [Subject to quota] | |
| 80-4 | 117.8860 | Other | Government of Portugal |
| | | Leather, in the rough, partly finished, or finished: | |
| | | [Chamois; patent; upholstery leather] | |
| | | Other: | |
| | | [Calf and kip] | |
| 80-5 | 121.50 | Pig and hog | Industrija Usnja Vrhnika, Yugoslavia, |
| | or | or | Tovarna Usnja Kamnik, Yugoslavia |
| | 121.50 pt. | In sheets of at least 5 square feet, of pig and hog | Industrija Usnja Vrhnika, Yugoslavia Tovarna Usnja Kamnik, Yugoslavia |
| | | Other: | |
| | | Fancy: | |
| 80-6 | 121.64 | Goat and kid | Florsheim Shoe Company, Chicago, IL |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved): | |
| | | [Beans; beets; cabbage; carrots; cauliflower] | |
| | | Celery: | |
| | | [If imported and entered during the period from April 15 to July 31, inclusive, in any year] | |
| 80-7 | 135.61 | Other | AGREXCO, Israel |
| | | [Chickpeas or garbanzos; corn-on-the-cob; cowpeas; cucumbers; dasheens; endive, including Witloof chicory] | |
| | | Eggplant: | |
| 80-8 | 136.20 | If entered during the period from April 1 to November 30, inclusive, in any year | Government of Morocco |
| 80-9 | 136.22 | Other | do. |
| | | [Garlic; horseradish; lentils; lettuce; lupines; okra; onions; peas] | |
| 80-10 | 137.10 | Peppers | AGREXCO, Israel |
| | | [Potatoes, white or Irish; radishes; squash; tomatoes; turnips or rutabagas] | |
| | | Other: | |
| | | [Brussels sprouts; chayote; fiddlehead ferns; jicamas, fresh or chilled; parsnips; yams and sweet potatoes] | |
| | | Other: | |
| 80-11 | 137.8782 or 137.8782 pt. | Frozen or Water chestnuts, frozen | La Choy Food Products, Archbold, OH do. |
| | | Vegetables, fresh, chilled, or frozen, and cut, sliced, or otherwise reduced in size (but not otherwise prepared or preserved): | |
| | | [Broccoli, cauliflower and okra; kidney beans, frozen; rutabagas; yucca] | |
| | | Other: | |
| 80-12 | 138.4510 | Fresh or chilled | AGREXCO, Israel |
| | | Frozen: | |
| | | [Asparagus] | |
| 80-13 | 138.4570 or 138.4570 pt. or 138.4570 pt. | Other or Sliced bamboo shoots or Sliced water chestnuts | La Choy Food Products, Archbold, OH do. do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Vegetables, dried, desiccated, or dehydrated, whether or not reduced in size or reduced to flour (but not otherwise prepared or preserved): | |
| | | Reduced to flour: | |
| 80-14 | 140.70 | Potatoes | Guatemala Export Promotion Center |
| | | Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of this part): | |
| | | [Beans; cabbage; chickpeas or garbanzos; black-eye cowpeas; onions; peas; pimientos; tomatoes; water chestnuts] | |
| | | Other: | |
| | | [Packed in salt, brine, or pickled] | |
| | | Other: | |
| 80-15 | 141.78 | Bamboo sheets in airtight containers | La Choy Food Products Archbold, OH |
| | | Other edible nuts, shelled or not shelled, blanched, or otherwise prepared or preserved: | |
| | | Shelled, blanched, or otherwise prepared or preserved: | |
| | | [Almonds; Brazil nuts; cashews; filberts; peanuts] | |
| 80-16 | 145.50 | Pecans | Government of Mexico |
| | | [Pignolia; pistache; walnuts] | |
| | | Other edible nuts: | |
| 80-17 | 145.58 or 145.58 pt. | Shelled or blanched or Macadamia, shelled or blanched | Government of Malawi do. |
| | | Berries, fresh, or prepared or preserved: | |
| | | Fresh or in brine: | |
| | | Strawberries: | |
| 80-18 | 146.58 | If entered during the period from June 15 to September 15, inclusive, in any year | Government of Morocco |
| 80-19 | 146.60 | If entered at any other time | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Melons, fresh, or prepared or preserved: | |
| | | Fresh: | |
| 80-20 | 148.24 | Watermelons | Government of Honduras |
| | | Olives, fresh, or prepared or preserved: | |
| | | Dried: | |
| 80-21 | 148.52 | Not ripe | Government of Morocco |
| 80-22 | 148.54 | Ripe | do. |
| | | Mixtures of two or more fruits, prepared or preserved: | |
| | | [In airtight containers and not containing apricots, citrus fruits, peaches or pears] | |
| 80-23 | 150.05 | Other | Narex-Middle East Company, Israel |
| 80-24 | 161.07 | Capers | Everett Trading Company, New York, NY, Government of Morocco |
| | | Rum (including cana paraguaya) | |
| 80-25 | 169.13 pt. | Cachaca or aguardente de cana in containers each holding not over 1 gallon | Government of Brazil |
| | | Cigarettes: | |
| 80-26 | 170.63 | Containing clove | Government of Indonesia |
| 80-27 | 182.49 | Shrimp chips | do. |
| | | Soy bean and other vegetable oil cake and oil-cake meal: | |
| | | [Linseed oil cake and oil-cake meal] | |
| 80-28 | 184.51 | Rapeseed oil cake and oil-cake meal | Government of Argentina |
| 80-29 | 184.53 | Other | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Plywood, whether or not face finished: | |
| | | Not face finished, or face finished with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply: | |
| 80-30 | 240.17 | With a face ply of Philippine mahogany (almon (Shorea almon)), bagtikan (Parashorea plicata), red lauan (Shorea negrosensis), white lauan (Pentacme contorta and P. mindanensis), mayapis (Shorea squamata), tangile (Shorea polysperma) and tiaong (Shorea spp.); meranti (Shorea spp.); red seraya (Shorea spp.); and white seraya (Parashorea spp.) | Government of Indonesia, Government of Malaysia |
| | or 240.17 pt. | or With a face ply of meranti (Shorea spp.) | Government of Indonesia, Government of Malaysia |
| | | Ornamented fabrics, in the piece, and ornamented motifs, not specially provided for: | |
| | | Of cotton by weight: | |
| 80-31 | 353.5012 | Woven | Kashmir Valley Arts, Santa Fe Springs, CA |
| | | Floor coverings of pile or tufted construction, of textile materials: | |
| | | In which the pile was inserted or knotted during weaving or knitting: | |
| | | With pile hand-inserted or hand-knotted: | |
| 80-32 | 360.05 | With over 50 percent by weight of the pile being hair of the alpaca, guanaco, huarizo, llama, misti, suri, or any combination of these hairs | Government of Bolivia, Government of Morocco, Government of Peru |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Floor coverings composed of braids, cords, fabric strips, and similar materials in continuous lengths, sewn or otherwise bound together but not woven, of textile materials: | |
| | | [Wholly or in part of braids (except tubular braids with a core)] | |
| | | Other: | |
| | | [With over 50 percent by weight of the fibers, exclusive of any core, being of wool] | |
| | | [With over 50 percent by weight of the fibers, exclusive of any core, being cotton, man-made fibers, or cotton and man-made fibers] | |
| | | [With over 50 percent by weight of the fibers, exclusive of any core, being jute] | |
| | | Other: | |
| | | In chief weight of the named material: | |
| 80-33 | 361.2210 | Vegetable fibers, except cotton | Government of Morocco |
| | | [Wool; man-made fibers] | |
| 80-34 | 361.2245 | Other | do. |
| | | Other bedding, not ornamented: | |
| | | Of wool: | |
| | | [Blankets] | |
| 80-35 | 363.75 or 363.75 pt. | Other or Hand-loomed or folklore pillow covers | Artesanias Titicaca, Ltda, Bolivia do. |
| | | Other furnishings, not ornamented: | |
| | | Of wool: | |
| | | [Knit (except pile or tufted construction); pile or tufted construction; nonwoven felt] | |
| | | Other: | |
| 80-36 | 367.3025 | Wall hangings | do., Kashmir Valley Arts, Santa Fe Springs, CA |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | |
| | | Articles not specially provided for, of textile materials: | |
| | | Lace or net articles, whether or not ornamented, and other articles ornamented: | |
| | | Of cotton: | |
| | | [Shoe uppers] | |
| 80-37 | 386.0430 | Other | Government of El Salvador |
| | or | or | |
| | 386.0430 pt. | Hand-woven hammocks | do. |
| | | Other articles, not ornamented: | |
| | | Of cotton: | |
| | | [Knit (except pile or tufted construction); pile or tufted construction] | |
| | | Other: | |
| | | [Shoe uppers; inked ribbons] | |
| 80-38 | 386.5040 | Other | do. |
| | or | or | |
| | 386.5040 pt. | Hand-woven hammocks | do. |
| | | Of vegetable fibers, except cotton: | |
| | | [Knit (except pile or tufted construction); pile or tufted construction] | |
| | | Other: | |
| | | [Of jute] | |
| 80-39 | 387.34 | Other | Government of India |
| | or | or | |
| | 387.34 pt. | Of coir | do. |

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| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | |
| | | Products suitable for medicinal use, and drugs: Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of Schedule 4 of the Tariff Schedules of the United States: Drugs: [13 specified drugs or categories of drugs] Other: [Alkaloids and their salts and other derivatives; antihistamines, including those chiefly used as antinauseants] | |
| | | Anti-infective agents: Antibiotics: | |
| 80-40 | 411.60 pt. | Ampicillin trihydrate | Fermentaciones y Sintesis, S.A., Mexico, Government of Mexico |
| | | [Autonomic drugs, except alkaloids and their derivatives; cardiovascular drugs, except alkaloids and their derivatives; dermatological agents and local anesthetics; drugs primarily affecting the central nervous system, except alkaloids and their derivatives; hormones, synthetic substitutes, and antagonists; vitamins, provitamins, and their analogs and derivatives used primarily for their vitamin activity] | |
| | | Other: | |
| 80-41 | 412.68 | Products provided for in the Chemical Appendix to the Tariff Schedules | H.G. Pollak (International) Ltd., Israel |
| | or 412.68 pt. | or Catheter lubrication jelly | do. |
| 80-42 | 412.70 | Other | Syntex USA Inc., San Francisco, CA |
| | or 412.70 pt. | or Naproxen and naproxen sodium | do. |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Acids: | |
| | | [Acetic; chloroacetic; citric; formic; gallic; lactic acid; naphthenic; oxalic; propionic acid and sorbic acid; pyrogallic; tartaric; valeric] | |
| | | Other: | |
| | | Carboxylic acids: | |
| | | [Carboxylic acids with other oxygen functions; thioglycolic acid] | |
| 80-43 | 425.9940 | Other carboxylic acids (including mercapto acids) | Bromine Compounds, Ltd., Israel |
| | or | or | |
| | 425.9940 pt. | Monobromo acetic acid | do. |
| | | Barium sulfate: | |
| | | Natural (barytes): | |
| 80-44 | 472.12 | Ground | Government of Mexico |
| | | Fatty substances, not sulfonated or sulfated, and not specially provided for: | |
| | | Fatty acids: | |
| | | Of animal (including marine animal) origin: | |
| 80-45 | 490.12 | Stearic acid | Government of Colombia |
| | | Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients: | |
| | | Of chinaware or of subporcelain: | |
| | | Household ware: | |
| | | Of nonbone chinaware or of subporcelain: | |
| | | Available in specified sets: | |
| 80-46 | 533.64 | In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart C of part 2 of Schedule 5 of the Tariff Schedules of the United States is over $56 | Government of Argentina |
| | | Not available in specified sets: | |
| 80-47 | 533.76 | Candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers, and salt and pepper shaker sets | do. |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| A. | Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | |
| | | Articles chiefly used for preparing, etc. (con.): Of china ware or of subporcelain (con.): Household ware (con.): Of nonbone chinaware, etc. (con.): Not available in specified sets (con.): | |
| 80-48 | 533.78 | Cups valued over $8 per dozen; saucers valued over $5.25 per dozen; soups, oatmeals, and cereals valued over $9.30 per dozen; plates not over 9 inches in maximum diameter and valued over $8.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $11.50 per dozen; platters or chop dishes valued over $40 per dozen; sugars valued over $23 per dozen; creamers valued over $20 per dozen; and beverage servers valued over $50 per dozen | Government of Argentina |
| | | Articles chiefly used in the household or elsewhere for preparing, serving, or storing food or beverages, or food or beverage ingredients; smokers' articles, household articles, and art and ornamental articles, all the foregoing not specially provided for: [Glassware made of glass containing by weight over 24 percent lead monoxide] [Glassware, other than the foregoing, decorated with metal flecking, glass pictorial scenes, or glass thread- or ribbon-like effects, any of the foregoing embedded or introduced into the body of the glassware prior to its solidification; millefiori glassware] [Glassware, other than the foregoing, colored prior to solidification, and characterized by random distribution of numerous bubbles, seeds, or stones, throughout the mass of the glass] [Glassware, other than the foregoing, pressed and toughened (specially tempered), chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients] | |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Articles chiefly used in the household, etc. (con.): | |
| | | Other glassware: | |
| | | [Smokers articles; perfume bottles fitted with ground glass stoppers] | |
| | | Other: | |
| | | Valued over $3 each: | |
| | | Cut or engraved: | |
| 80-49 | 546.64 | Valued over $5 each | B.Z.T. Ltd., Israel |
| | | Other: | |
| 80-50 | 546.68 | Valued over $5 each | do. |
| | | Forks, spoons, and ladles, all the foregoing which are kitchen or table ware, with or without their handles: | |
| | | Forks: | |
| | | With their handles: | |
| | | [With silver or silver-plated handles; with stainless steel handles; with animal horn, bone, ivory, mother-of-pearl, or shell handles; with rubber or plastics handles] | |
| | | Other: | |
| 80-51 | 650.47 | Barbecue forks with wood handles | Government of Colombia |
| | | Other: | |
| 80-52 | 650.4920 | Table forks (including table serving forks) | Government of Malaysia |
| | | Gloves of rubber or plastics: | |
| | | With textile fabric fourchettes or sidewalls; or with the outer surface thereof (except as to applied cuffs, if any) wholly of plastics, and the seams of which are heat sealed and not sewn or stitched: | |
| | | [With textile fabric fourchettes or sidewalls] | |
| | | Other: | |
| 80-53 | 705.8540 or 705.8540 pt. | Disposable gloves or Disposable surgical and medical gloves | H.C. Pollak (International) Ltd., Israel do. |

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Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| | | Luggage and handbags, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets; and flat goods: | |
| | | Of textile materials (except yarns, of paper), whether or not ornamented: | |
| | | [Wholly or in part of braid] | |
| | | Other: | |
| | | Of vegetable fibers and not of pile or tufted construction: | |
| | | [Of cotton] | |
| | | Other: | |
| 80-54 | 706.2380 | Flat goods | Government of Malta |
| | | Other: | |
| | | [Of cotton] | |
| | | Of other textile materials: | |
| 80-55 | 706.2460 | Flat goods | Kmart Corporation Troy, MI |
| | | | Government of Malta |
| 80-56 | 706.30 or 706.30 pt. | Of reinforced or laminated plastics or Flat goods of reinforced or laminated plastics | Government of Malta do. |
| | | Of other materials: | |
| | | [Handbags; flat goods, of metal] | |
| | | Other: | |
| 80-57 | 706.6045 | Flat goods | Kmart Corporation, Troy, MI |
| | | Time switches with watch or clock movements, or with synchronous or subsynchronous motors: | |
| 80-58 | 715.68 or 715.68 pt. | Valued over $10 each or Chronometric time locks | Government of Argentina |
| | | Furniture, and parts thereof, not specially provided for: | |
| | | Of unspun fibrous vegetable materials: | |
| 80-59 | 727.11 | Of rattan | Government of Thailand |

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Annex I

Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences | | |
| | | Other cheeses, and substitutes for cheeses: | |
| | | Cheeses made from sheep's milk: | |
| 80-60 | 117.65 | In original loaves and suitable for grating | Cheese Importers Group of the Italy-America Chamber of Commerce, Inc., New York, NY |
| 80-61 | 117.67 | Pecorino, in original loaves, not suitable for grating | do. |
| | | Parts of bicycles: | |
| | | Three speed hubs whether or not incorporating a coaster brake; caliper brakes; multiple free-wheel sprockets: | |
| 80-62 | 732.3875 | Caliper brakes | Dia-Compe, Inc., Fletcher, NC |
| | | Articles not specially provided for, of rubber or plastics: | |
| | | [Of shellac or copal; of natural rubber; of casein; of vulcanized fiber] | |
| | | Other: | |
| | | [Artificial flowers, trees, foliage, fruits, vegetables, grasses, or grains, all the foregoing, wholly or almost wholly of plastics, other than articles classifiable in item 748.20; parts of footwear] | |
| 80-63 | 774.55 | Other | Amko Plastics, Inc., Cincinnati, OH |
| | or 774.55 pt. | or Shopping bags of rubber or plastics | do. |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences | |
| | | Strands, ropes, cables, and cordage, all the foregoing, of wire, whether or not cut to length, and whether or not fitted with hooks, swivels, clamps, clips, thimbles, sockets, or other fittings or made up into slings, cargo nets, or similar articles: | |
| | | Not fitted with fittings and not made up into articles: | |
| | | Not covered with textile or other non-metallic material: | |
| | | Ropes, cables, and cordage other than wire strand: | |
| | | Valued 13 cents or more per pound: | |
| | | [Of stainless steel] | |
| | | Other: | |
| | | Of iron or steel (except stainless): | |
| | | [Of brass plated wire] | |
| 80-64 | 642.1630 | Other | Committee of Domestic Steel Wire Rope and Specialty-Cable Manufacturers, Washington, DC |
| | | Railroad and railway rolling stock: | |
| 80-65 | 690.15 | Passenger, baggage, mail, freight and other cars, not self-propelled | AFL-CIO, Washington, DC<br>Brotherhood of Railway Carmen of the United States and Canada, Washington, DC<br>International Union, Transport Workers Union of America, Washington, DC |
| | | Eyeglasses, lorgnettes, goggles, and similar articles, all the foregoing whether used for corrective, protective, or other purposes; frames and mountings for any of the foregoing, and parts of such frames and mountings: | |
| 80-66 | 708.47 | Frames and mountings, and parts thereof | International Union of Electrical, Radio, and Machine Workers, Washington, DC<br>Optical Manufacturers Association, Arlington, VA |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences (con.) | | |
| | | Toys, and parts of toys, not specially provided for:<br>[Toys having a spring mechanism]<br>Other:<br>[Kites]<br>Other:<br>[Toys having a friction or weight operated motor; toys having an electric motor]<br>Other (except parts):<br>Wholly or almost wholly of rubber or plastics: | |
| 80-67 | 737.9535 | Inflatable | National Latex Products Co., Ashland, OH,<br>Oak Rubber Co., Ravenna, OH |
| | or<br>737.9535 pt. | or<br>Toy balloons (including inflatable rubber punch balls) | National Latex Products Co., Ashland, OH<br>Oak Rubber Co., Ravenna, OH |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | D. Petition to subdivide a TSUS item currently designated as an eligible article for the Generalized System of Preferences | |
| | | Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal: | |
| | | Articles, wares, and parts, of base metal, not coated or plated with precious metal: | |
| | | Of iron or steel: | |
| | | Not enameled or glazed with vitreous glasses: | |
| | | [Cast articles, coated; of tin plate] | |
| | | Other: | |
| | | [Cooking ware, and parts thereof, wholly or almost wholly of cast-iron] | |
| | | [Toilet and sanitary ware] | |
| | | Other: | |
| | | [Cooking ware (except stainless steel or chrome-plated)] | |
| | [654.01] | Other | |
| | | [Stainless steel; chrome-plated ware; kitchen ware (except stainless steel and chrome plated)] | |
| 80-68 | 654.01 pt. | Other | Metal Cookware Manufacturers Association, Walworth, WI |
| | 654.01 pt. | Other | |
| | | E. Petitions to determine eligible articles as not like or directly competitive with any article produced in the United States on January 3, 1975, in order to avoid loss of GSP duty-free treatment under the provisions of section 504(c)(1)(B) of the Trade Act of 1974 | |
| | | Leather in the rough, partly finished, or finished: | |
| | | [Chamois; patent; upholstery leather] | |
| | | Other: | |
| | | [Calf and kip; pig and hog] | |
| | | Other: | |
| | | Not fancy: | |
| 80-69 | 121.55 | Buffalo | Florsheim Shoe Company, Chicago, IL |
| | | [Reptilian] | |
| | | Other: | |
| 80-70 | 121.62 | Goat and kid | do. |

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Petitions Accepted for Review

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | E. Petitions to determine eligible articles as not like or directly competitive with any article produced in the United States on January 3, 1975, in order to avoid loss of GSP duty-free treatment under the provisions of section 504(c)(1)(B) of the Trade Act of 1974 (con.) | | |
| | | Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of part 8 of Schedule 1 of the Tariff Schedules of the United States): | |
| 80-71 | 141.70 | Water chestnuts | La Choy Food Products, Archbold, OH |
| | | Game machines, including coin or disc operated game machines and including games having mechanical controls for manipulating the action, and parts thereof: | |
| | | [Video games and parts thereof] | |
| | | Other: | |
| | | [Coin or disc operated game machines] | |
| 80-72 | 734.2040 pt. | Hand-held electronic game machines | Interstate Industries, Inc., Mundelein, IL |

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Ann Hughes

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 80-25385 Filed 8-19-80; 8:45 am]

BILLING CODE 3190-01-C

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Federal Register

Vol. 45, No. 163

Wednesday, August 20, 1980

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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 41 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 | HHS/FDA | | DOT/SLSDC | HHS/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

## REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

HEALTH AND HUMAN SERVICES DEPARTMENT

Disease Control Center—

48626 7-21-80 / Interstate shipment of etiologic agents

POSTAL SERVICE

48619 7-21-80 / Poisons and controlled substances; deletion of requirement to use registered mail

### Deadlines for Comments on Proposed Rules for the Week of August 24 through August 30, 1980

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

50347 7-29-80 / Irish potatoes grown in Modoc and Siskiyou Counties in California and in all Counties in Oregon except Malheur County; handling regulations; comments by 8-28-80

Animal and Plant Health Inspection Service—

43366 6-27-80 / Gypsy moth and browntail moth; list of hazardous recreational vehicle sites; comments by 8-26-80

43368 6-27-80 / Pink bollworm quarantine; suppressive areas in Ark. and La.; comments by 8-26-80

Federal Crop Insurance Corporation—

50341 7-29-80 / Almond crop insurance regulations; comments by 8-28-80

43783 6-30-80 / Proposed canning and processing tomato crop insurance regulations; comments by 8-29-80

43776 6-30-80 / Proposed Eastern U.S. apple crop insurance regulations; comments by 8-29-80

43771 6-30-80 / Proposed peach crop insurance regulations; comments by 8-29-80

Food and Nutrition Service—

42303 6-24-80 / Food distribution program; subdistributing, and recipient agencies; processing of USDA—donated foods by commercial or institutional facilities; comments by 8-25-80

43422 6-27-80 / National School Lunch and School Breakfast Programs; comments by 8-25-80

Food Safety and Quality Service—

43425 6-27-80 / Bacon made with dry curing materials; comments by 8-26-80

36417 5-30-80 / Food grading policy; comments by 8-28-80

35345 5-27-80 / Voluntary Grading of Shell Eggs; comments by 8-25-80

Rural Electrification Administration—

49586 7-25-80 / Proposed revision of REA Specification D-17 remanufactured distribution transformers; comments by 8-25-80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

41661 6-20-80 / Nondiscrimination on basis of sex in Federally assisted programs; comments by 8-25-80

CIVIL AERONAUTICS BOARD

46812 7-11-80 / Charter flight limitations; Carriers obligation in case of interruptions of its service; comments by 8-25-80

49291 7-24-80 / Employee protection program; Federal payments to airline employees; determination of "qualifying dislocation", comments by 8-25-80

48654 7-21-80 / Interim fare suspension policies for Puerto Rico / Virgin Islands, Hawaii and Lower-48-Alaska (but not Intra-Alaska) markets; reply comments by 8-28-80

42629 6-25-80 / Notice to passengers of conditions of carriage; reply comments by 8-25-80

COMMERCE DEPARTMENT

International Trade Administration—

43010 6-25-80 / Commodity Control List; revision; comments by 8-25-80

43139 6-25-80 / Export Administration Regulations to conform to revised Commodity Control List; comments by 8-25-80

[Corrected at 45 FR 50724, July 31, 1980]

National Oceanic and Atmospheric Administration—

52853 8–6–80 / Atlantic bluefin tuna regulations; Intent to prepare environmental impact statement; comments by 8–29–80

43205 6–26–80 / Flower Garden Banks Marine Sanctuary; comments by 8–25–80

53847 8–13–80 / Northeast Pacific Ocean; order to retain domestic annual harvest; comments by 8–28–80

Office of the Secretary—

49278 7–24–80 / Regional Action Planning Commissions; administration; comments by 8–25–80

COMMODITY FUTURES TRADING COMMISSION

42324 6–24–80 / Procedures of the Complaints Section and conforming Amendments to reparation rules; comments by 8–25–80

COMMUNITY SERVICES ADMINISTRATION

50296 7–28–80 / Grantees, funding; community action agencies, program management system; republication; comments by 8–27–80

COST ACCOUNTING STANDARDS BOARD

49274 7–24–80 / Allocation of business unit general and administrative expenses to final cost objectives; comments by 8–25–80

49573 7–25–80 / Cost accounting standard; allocation of home office expenses to segments; comments by 8–25–80

DEFENSE DEPARTMENT

Office of the Secretary—

43438 6–27–80 / Policy on organizations that seek to represent or organize members of the armed forces in negotiation or collective bargaining; comments by 8–26–80

ENERGY DEPARTMENT

50355 7–29–80 / General Policy for establishing prices or charges for materials and services sold by DOE; comments by 8–28–80

49601 7–25–80 / Property management regulation, transportation and traffic management; comments by 8–25–80

Conservation and Solar Energy Office—

43976 6–30–80 / Energy conservation program for consumer products; comments by 8–29–80

Economic Regulatory Administration—

44238 6–30–80 / Mandatory petroleum price regulations; equal application rule; comments by 8–29–80

45098 7–2–80 / Review and establishment of natural gas curtailment priorities for interstate pipelines; comments by 8–29–80

Federal Energy Regulatory Commission—

49087 7–23–80 / Establishment of natural gas curtailment priorities for interstate pipelines; previous proposal by ERA; comments by 8–29–80

51219 8–1–80 / High-cost natural gas: Production enhancement procedures; comments by 8–25–80

ENVIRONMENTAL PROTECTION AGENCY

43794 6–30–80 / Approval and promulgation of State implementation plans; proposed revision of New York State Implementation Plan; comments by 8–29–80

49600 7–25–80 / N-(1-Ethylpropyl)-3,4-Dimethyl-2,6-Dinitrobenzenamine; proposed tolerances; comments by 8–25–80

49599 7–25–80 / Ohio; approval and promulgation of implementation plans; comments by 8–25–80

43148 6–25–80 / Prior notice of citizen suit; proposed procedural regulation; comments by 8–25–80

42335 6–24–80 / Revision of New Jersey State Implementation Plan; comments by 8–25–80

39766 6–11–80 / Standards to limit emissions of volatile organic compounds (VOC) and trichloroethylene 1,1,1-trichloroethane, perchloroethylene, methylene chloride, and trichlorotrifluoroethane from new, modified, and reconstructed organic solvent cleaners (degreasers) in which solvents are used to clean (degrease) metal, plastic, fiberglass, or any other type of material; comments by 8–25–80

49110 7–23–80 / Visibility protection for Federal class I areas; guideline availability; comments by 8–25–80

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

43794 6–30–80 / Equal employment opportunity in the Federal government; complaints of handicap discrimination; comments by 8–29–80

50326 7–29–80 / Procedure for review of final decisions of the Merit Systems Protection Board involving allegations of discrimination (mixed cases); comments by 8–28–80

FEDERAL COMMUNICATIONS COMMISSION

46121 7–9–80 / American Telephone and Telegraph Co., manual containing procedures to be followed in allocating costs; comments by 8–29–80

42729 6–25–80 / Amendments to broadcast equal employment opportunity rules and FCC Form 395; comments by 8–25–80

42747 6–25–80 / FM broadcast station in Anchorage, Alaska; changes in table of assignments; reply comments by 8–27–80

42749 6–25–80 / FM broadcast station in Belfast, Me.; changes in table of assignments; reply comments by 8–27–80

42751 6–29–80 / FM broadcast station in Hanover, N.H.; changes in table of assignments; reply comments by 8–27–80

46452 7–10–80 / FM broadcast station in Jacksonville, Fla.; channel assignment; comments by 8–25–80

42752 6–25–80 / FM broadcast station in Petersburg, Ind.; changes in table of assignments; reply comments by 8–27–80

42748 6–25–80 / FM broadcast station in Vincennes, Ind.; changes in table of assignments; reply comments by 8–27–80

46455 7–10–80 / FM broadcast stations in Wichita and Winfield, Kans.; change to table of assignments; comments by 8–25–80

42727 6–25–80 / FM broadcast stations in Woodward and Alva, Okla.; changes in table of assignments; reply comments by 8–27–80

10606 2–15–80 / Revision of the Radio Control (R/C) Radio Service Rules in plain language; reply comments by 8–29–80

FEDERAL EMERGENCY MANAGEMENT AGENCY

42341 6–24–80 / Policy and procedures for review and approval of State and local emergency plans and preparedness for coping with offsite effects of radiological emergencies which may occur at nuclear power facilities; comments by 8–25–80

FEDERAL MARITIME COMMISSION

42721 7–25–80 / Foreign commerce tariff regulations; amendments implementing the Ocean Shipping Act of 1978; comments by 8–25–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

35576 5–27–80 / Anorectal drug products for OTC human use; establishment of a monograph; comments by 8–25–80

44326 7–1–80 / Tentative final regulation prohibiting deodorizer distillate substances from animal food or feed; comments by 8–29–80

[*See also* 45 FR 28349, 4–29–80]

Office of the Secretary—

47169 7-14-80 / Freedom of Information Act; treatment of data in contract proposals; comments by 8-25-80

Social Security Administration—

42647 6-25-80 / Federal Old-Age, Survivors, and Disability Insurance benefits; computing primary insurance amounts; comments by 8-25-80

43235 6-30-80 / Inclusion of child receiving Old-Age, Survivors, or Disability Insurance benefits into an Aid to Families With Dependent Children Assistance unit; comments by 8-25-80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Assistant Secretary for Housing Office—Federal Housing Commissioner—

46377 7-10-80 / Increased loan-to-value ratios for dwellings with warranty plans; comments by 8-25-80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

43358 6-26-80 / Proposed endangered status for *achatinella*, a genus of Hawaiian tree snails; comments by 8-25-80

49854 7-25-80 / Proposal to determine *Erogonum* gypsophilum [Gypsum Wild buckwheat] to be a threatened species and to determine its critical habitat, Carlsbad, N. Mex., 8-27-80

Surface Mining Reclamation and Enforcement Office—

49958 7-28-80 / Receipt of abandoned mine lands reclamation plan submission from State of Illinois; comments by 8-27-80

INTERSTATE COMMERCE COMMISSION

49627 7-25-80 / Chicago, Ill., commercial zone; comments by 8-25-80

LIBRARY OF CONGRESS

Copyright Office—

50823 7-31-80 / Unauthorized use of certain works transmitted "live" and simultaneously being fixed in tangible form; comments by 8-29-80

PERSONNEL MANAGEMENT OFFICE

49577 7-25-80 / Pay administration features of the Merit Pay System; implementation; comments by 8-25-80

SECURITIES AND EXCHANGE COMMISSION

49957 7-28-80 / Statement of beneficial ownership of securities of registered holding companies and their subsidiaries; comments by 8-25-80

42642 6-25-80 / Unavailability of exemption for limited offers and sales of securities of certain issuers; comments by 8-30-80

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

35405 5-27-80 / Lamps, Reflective Devices and Associated Equipment; Federal Motor Vehicle Safety Standards; comments by 8-25-80

TREASURY DEPARTMENT

Customs Service—

49591 7-25-80 / Proposed change in the Customs regulations pertaining to the issuance of Administrative rulings concerning the tariff classification of merchandise; comments by 8-25-80

## Deadlines for Comments On Proposed Rules for the Week of August 31 through September 6, 1980

AGRICULTURE DEPARTMENT

Commodity Credit Corporation—

52342 8-6-80 / CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities; comments by 9-5-80

Farmers Home Administration—

51818 8-5-80 / Biomass energy and alcohol fuels loans and guarantees; comments by 9-4-80

Federal Corp. Insurance Corporation—

44305 7-1-80 / Procedures for insuring Florida citrus effective with 1981 crop year; comments by 9-2-80

44311 7-1-80 / Procedures for insuring citrus in Texas effective with the 1981 crop year; comments by 9-2-80

CIVIL AERONAUTICS BOARD

52820 8-8-80 / Actual notice to passengers about the terms of the contract of carriage, airlines requirement; comments by 9-3-80

42317 6-24-80 / Simplification of regulations for airline ticket and ticket counter notices to passengers; reply comments by 9-1-80

[*See also* 45 FR 25817, 4-16-80]

COMMERCE DEPARTMENT

International Trade Administration—

45891 7-8-80 / Processing export license applications; procedures and time limits; comments by 9-2-80

45894 7-8-80 / Qualified general license; comments by 9-2-80

National Oceanic and Atmospheric Administration—

49953 7-28-80 / Deep seabed mining advance notice of proposed rulemaking for the mining of deep seabed minerals; comments by 8-31-80

EDUCATION DEPARTMENT

45130 7-2-80 / Guaranteed Student Loan Program; refund of tuition charge and other fees; comments by 9-2-80

ENERGY DEPARTMENT

49586 7-25-80 / Outer Continental Shelf Oil and gas leasing, developoment of a bidding system with a work commitment component; comments by 9-5-80

Economic Regulatory Administration—

51833 8-5-80 / Reports on major electric utility system emergencies; comments by 9-5-80

ENVIRONMENTAL PROTECTION AGENCY

50825 7-31-80 / Air quality implementation plans; Illinois; comments by 9-2-80

50832 7-31-80 / Air quality implementation plans; New York; comments by 9-2-80

51619 8-4-80 / Availability of implementation plan revision for the state of Oregon; comments by 9-3-80

44970 7-20-80 / California plan to control floride emissions from existing phosphate fertilizer plants; comments by 9-2-80

45322 7-3-80 / Electroplating point source category effluent guidelines and standards pretreatment standards for existing sources; comments by 9-2-80

51854 8-5-80 / Nuclear polhedrosis virus of *Heliothis Zea*; proposed exemption from the requirement of a tolerance; comments by 9-4-80

52185 8-6-80 / Textile mills point source category effluent limitations guidelines; pretreatment standards, and new source performance standards; comments by 9-5-80

FEDERAL COMMUNICATIONS COMMISSION

42725 6-25-80 / FM broadcast station in Lake Havasu, Ariz.; changes in table of assignments; reply comments by 9-2-80

45600 7-7-80 / Permission for use of alternative procedures in choosing applicants for radio authorization in the multipoint distribution service; reply comments period extended to 9-5-80

[*See also* 45 FR 29335, 5-2-80]

47885 7-17-80 / Scope and coverage of restrictions on employee financial interests; reply comments by 9-2-80

45601 7-7-80 / Technical requirements applicable to the multipoint distribution service, the instructional television fixed service and the private operational-fixed microwave service; comment period extended to 9-2-80

[*See also* 45 FR 29350, 5-2-80]

51251 8-1-80 / Verification and methods of measurement of computing devices; comments extended to 9-2-80

[*See also* 45 FR 42347, 6-24-80]

FEDERAL EMERGENCY MANAGEMENT AGENCY

50282 7-28-80 / Acquisition of flood damaged structures (interim rule); comments by 9-1-80

51426 8-1-80 / Proposed notice of rules exempting systems of records from certain requirements of the Privacy Act of 1974 and proposed section to FEMA Privacy Act regulations covering exemptions under the Privacy Act of 1974; comments by 9-2-80

49960 7-28-80 / Statewide FAIR Plans; Depopulation Program; comments by 9-1-80

FEDERAL HOME LOAN BANK BOARD

46431 7-10-80 / NOW accounts; comments by 9-3-80

FEDERAL TRADE COMMISSION

44317 7-1-80 / American Art Clay Co., Inc.; Consent agreement with analysis to aid public comment; comments by 9-2-80
[Corrected at 45 FR 49589, 7-25-80]

51218 8-1-80 / Reasonable duties under a full warranty; comments extended to 9-2-80
[*See also* 45 FR 37386, 6-2-80]

44324 7-1-80 / Totes Inc.; consent agreement with analysis to aid public comments; comments by 9-2-80

HEALTH AND HUMAN SERVICES DEPARTMENT

Disease Control Center—

47878 7-17-80 / Grants for preventative health services; comments by 9-2-80

Food and Drug Administration—

51184 8-1-80 / Ethylene-Vinyl acetate-carbon monoxide polymer, safe use as a component of adhesives in articles for food-contact use; objections by 9-2-80

51766 8-5-80 / Food additives for human consumption; Sodium Stearoyl—2—Lactylate; objections by 9-6-80

51767 8-5-80 / Indirect food additives; 1,3,5-Triethyl-hexahydro-1,3,5-Triazine; objections by 9-4-80

30002 5-6-80 / Ophthalmic Drug Products for Over-the-Counter Human Use; Establishment of a Monograph; reply comments by 9-3-80

Public Health Services—

48507 7-18-80 / Grants for Community Mental Health Centers; Provisional nature of amounts of initial operation and staffing, conversion, and financial distress, grants; comments by 9-2-80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

31446 5-13-80 / Endangered and threatened wildlife and plants; review of status of nine Antich, California, insect species; comments by 9-1-80

Surface Mining Reclamation and Enforcement Office—

54372 8-15-80 / Pennsylvania permanent regulatory program; comments by 9-2-80
[*See also* 45 FR 54372, 7-11-80]

51240 8-1-80 / Surface Coal Mining and reclamation operations; Permanent regulatory program; Proposed interpretive rules; comments by 9-2-80

INTERSTATE COMMERCE COMMISSION

45545 7-3-80 / Acceptable forms of requests for operating authority (motor carriers and brokers of property); comments by 9-2-80

52186 8-6-80 / Recordation of documents; comments by 9-5-80

51213 8-1-80 / Rules governing applications filed by motor carriers; comments extended to 9-2-80
[Originally published at 45 FR 45534, 7-3-80 and corrected at 45 FR 49082, 7-23-80]

51213 8-1-80 / Rules governing applications for operating authority; comments extended to 9-2-80
[Originally published at 45 FR 45534, 7-3-80]

JUSTICE DEPARTMENT

Attorney General—

52183 8-6-80 / Privacy Act; exemption of records systems; comments by 9-5-80

Parole Commission—

44966 7-2-80 / Appellate hearings; oval representation; comments by 9-2-80

NATIONAL CREDIT UNION ADMINISTRATION

47846 7-17-80 / Federally insured state chartered credit unions; Federal credit union share accounts, share certificate accounts; and share draft accounts; comments by 9-1-80

NUCLEAR REGULATORY COMMISSION

45302 7-2-80 / Standards for protection against radiation; miscellaneous clarifying amendments; comments by 9-2-80

NUCLEAR SAFETY OVERSIGHT COMMITTEE

50772 7-31-80 / Privacy Act of 1974; regulations for implementation; comments by 9-2-80

PERSONNEL MANAGEMENT OFFICE

44304 7-1-80 / Reduction in force; competitive level placement, retention register, length of service, etc.; comments by 9-2-80

51214 8-1-80 / Removal, reinstatement, and guaranteed placement in the Senior Executive Service; comments by 9-2-80

POSTAL SERVICE

51846 8-5-80 / Address cards arranged in sequence of carrier delivery; comments by 9-4-80

SECURITIES AND EXCHANGE COMMISSION

49954 7-28-80 / Electric utility companies; acquisition of voting securities of electric generation or transmission companies; exemption; comments by 9-2-80

47159 7-14-80 / Short Selling by market makers; modification of Rule 10a-1; comments by 8-31-80

TRANSPORTATION DEPARTMENT

Coast Guard—

43226 6-26-80 / Drawbridge operation regulations; standards opening and acknowledging signals; comments by 9-1-80

48662 7-21-80 / Establishment of a special anchorage area at Apollo Beach, Fla.; comments by 9-4-80

48058 7-17-80 / Safety rules for self-propelled vessels carrying hazardous liquids; comments by 9-2-80

TREASURY DEPARTMENT

Internal Revenue Service—

44965 7-2-80 / Tax-force sales of articles to be used for, or resold for further manufacture; comments by 8-31-80

WAGE AND PRICE STABILITY COUNCIL

51541 8-4-80 / Amendment of procedural rules for second program year; questions and answers; interim rule; comments by 9-4-80

WATER RESOURCES COUNCIL

48800 7-21-80 / State Water Management Planning; program guidelines; comments by 9-5-80


## Next Week's Meetings


AGING—FEDERAL COUNCIL

52188 8-6-80 / Meeting, Washington, D.C. (open), 8-25 and 8-26-80

AGRICULTURE DEPARTMENT

Forest Service—

46836 7-11-80 / East Carson Grazing Advisory Board, Questa, N.M. (open), 8-26-80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

49200 7-23-80 / Humanities Panel, Washington, D.C. (closed), 8-26 through 8-29-80

51676 8-4-80 / Humanities Panel, Washington, D.C. (closed), 8-25 through 8-29-80

47561 7-15-80 / Media Arts Panel (General Services to the Field), Washington, D.C. (open), 8-25, 8-26 and 8-27-80

56677 8-4-80 / Music Panel (Jazz Section), Washington, D.C. (closed), 8-25-80

52516 8-7-80 / National Council on the Arts, Design Arts Panel (Design Communication), Washington, D.C. (closed), 8-25 and 8-26-80

52517 8-7-80 / National Council on the Arts, Expansion Arts Panel, Santa Fe, N. Mex., (open), 8-27 through 8-29-80

CIVIL RIGHTS COMMISSION

50617 7-30-80 / Hawaii Advisory Committee, Honolulu, Hawaii (open), 8-25-80

51629 8-4-80 / Indiana Advisory Committee, Terra Haute, Ind. (open), 8-25-80

51629 8-4-80 / Nevada Advisory Committee, Reno, Nev. (open), 8-29-80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

49120 7-23-80 / Emergency Striped Bass Study, Washington, D.C. (open), 8-25-80

50849 7-31-80 / Mid-Atlantic Fishery Management Council, Surf Clam/Ocean Quahog Resources Subpanel, Dover, Del. (open), 8-29-80

52439 8-7-80 / New England Fishery Management Council, Rockport, Maine (open), 8-27 and 8-28-80

49120 7-23-80 / South Atlantic Fishery Management Council, Charleston, S.C. (open), 8-26 through 8-28-80

National Telecommunications and Information Administration—

51867 8-5-80 / Electromagnetic Radiation Management Advisory Council, Washington, D.C. (open), 8-26 and 8-27-80

United States Travel Service—

39884 6-12-80 / Travel Advisory Board, Washington, D.C. (open), 8-26-80

[Rescheduled at 45 FR 46841, 7-11-80]

DEFENSE DEPARTMENT

Army Department

51132 8-4-80 / Chief of Engineers Environmental Advisory Board, Vicksburg, Miss. (open), 8-26 through 8-28-80

51632 8-4-80 / National Hydropower Study Results presentation, Little Rock, Ark. (open), 8-27-80

Office of the Secretary—

50379 7-29-80 / Defense Intelligence Agency Advisory Committee, Rosslyn, Va. (closed), 8-25 and 8-26-80

EDUCATION DEPARTMENT

47720 7-16-80 / Education of Disadvantaged Children, National Advisory Council; Committee on Federal Administration of Title I, 8-29-80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

52900 8-8-80 / Municipal Waste-to-Energy Development plan, Phoenix, Ariz. (open), 8-27 and 8-28-80

Economic Regulatory Administration—

49125 7-23-80 / Collins Units 4 and 5 generating station, scoping meeting, Morris, Ill. (open), 8-26-80

Federal Energy Regulatory Commission—

46075 7-9-80 / Annual Report for Natural Gas Companies (Class A and B); revision of Form No. 2; comments by 8-29-80

Western Area Power Administration—

50929 7-31-80 / Eastern Division, Pick-Sloan Missouri Basin Program, post-1985 marketing plan: Bismarck, N. Dak., 8-25; Moorhead, Minn., 8-26; Sioux City, Iowa, 8-27; Lincoln, Nebr., 8-28; Mitchell, S. Dak., 8-29-80 (all sessions open)

ENVIRONMENTAL PROTECTION AGENCY

49973 7-28-80 / National Air Pollution Control Techniques Advisory Committee, Philadelphia, Pa. (open), 8-26 and 8-27-80

HEALTH AND HUMAN SERVICES DEPARTMENT

Disease Control Center—

37302 6-2-80 / Center for Disease Control Programs and Policies Advisory Committee (Ad Hoc), Atlanta, Ga. (open), 8-27 through 8-29-80

Health Care Financing Administration—

50373 7-29-80 / Proposed Rule on Conditions of participation for skilled nursing and intermediate care facilities, (open), New York, N.Y. 8-27-80; Chicago, Ill., 8-26 and 8-27-80; Denver, Colo., 8-27-80; San Francisco, Calif., 8-26-80 and Seattle, Wash., 8-25-80

National Institutes of Health—

53876 8-13-80 / National Cancer Advisory Board Working Group on Board Activities and Agenda, Bethesda, Md. (open), 8-28-80

53877 8-13-80 / President's Cancer Panel, Bethesda, Md. (open), 8-29-80

INTERIOR DEPARTMENT

Indian Affairs Bureau—

48258 7-18-80 / Shell Coal Lease Crow Indian Reservation, Intent to Prepare and consider an EIS, Scoping Meeting, Pryor, Mont., 8-26-80; Crow Agency, Mont., 8-27-80; Lodge Grass, Mont., 8-28-80 (all sessions open)

Land Management Bureau—

49366 7-24-80 / Arizona Strip District Multiple-Use Council, St. George, Utah (open), 8-28-80

52935 8-8-80 / Coal land in Whitley and McCrory Counties, Ky.; availability of environmental assessment, Williamsburg, Ky., 8-28-80

49684 7-25-80 / Craig District Grazing Advisory Board, Walden, Colo. (open), 8-28 and 8-29-80

47933 7-17-80 / Las Cruces District Grazing Advisory Board, Las Cruces, N. Mex. (open), 8-26-80

46491 7-10-80 / Lewistown District Grazing Advisory Board, Lewistown, Mont. (open), 8-25 and 8-26-80

49983 7-28-80 / Lewistown District Multiple Use Advisory Council Lewistown, Mont., 8-27 and 8-28-80

48266 7-18-80 / Safford District Advisory Council, Safford, Arizona (open), 8-26-80

44692 7-10-80 / Salt Lake District Multiple Use Advisory Council, Salt Lake City, Utah (open), 8-27-80

49365 7-24-80 / Worland District Advisory Council, Worland, Wyo. (open), 8-27-80

National Park Service—

49668 7-25-80 / Crater Lake National Park, Workshops: Crater Lake National Park, Oreg., 8-25-80; Klamath Falls, Oreg., 8-26-80; Medford, Oreg., 8-27-80; Roseburg, Oreg., 8-28-80; and Corvallis, Oreg., 8-29-80

Office of the Secretary—

52261 8-6-80 / Oil Shale Task Force (open)

8-26-80; Salt Lake City, Utah

8-27-80; Denver, Colo.

52260 8-6-80 / Oil Shale Tract Delineation—Tract Selection Criteria, (open)

8-25-80; Salt Lake City, Utah

8-28-80; Denver, Colo.

NUCLEAR REGULATORY COMMISSION

53623 8-12-80 / Advisory Committee on Reactor Safeguards, Subcommittee on Consideration of Class 9 Accidents, Washington, D.C. (open), 8-28-80

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

51710 8-4-80 / Meeting, Washington, D.C. (closed unless otherwise stated), 8-26-80

SMALL BUSINESS ADMINISTRATION

49004 7-22-80 / Region V Advisory Council Executive Board, Chicago, Ill. (open), 8-26-80

53306 8-11-80 / Region X Advisory Council Executive Board, Portland, Oreg. (open), 8-27-80

TRANSPORTATION DEPARTMENT

Federal Railroad Administration—

52541 8-7-80 / National Railroad Passenger Corp. (AMTRAK), Washington, D.C. (open), 8-26-80

TREASURY DEPARTMENT

Office of the Secretary—

51330 8-1-80 / Renegotiating the Tax Treaty with Trinidad and Tobago, Washington, D.C. (open), 8-27-80

VETERANS ADMINISTRATION

47561 7-15-80 / Central Office Education and Training Review Panel, Washington, D.C. (open), 8-26-80

51039 7-31-80 / Station Committee on Educational Allowances, Nashville, Tenn. (open), 8-29-80

## Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

48905 7-22-80 / Foreign quarantine notices, flag smut (foreign strains), Hyattsville, Md., 8-27-80

53449 8-12-80 / Foreign quarantine notices; importation of Maypan variety of coconut from Jamaica, Hyattsville, Md., 8-27-80

49503 7-25-80 / Nursery stock, plants, roots, bulbs, seeds, and other plant products, certain seeds imported from Brazil, Hyattsville, Md., 8-27-80

Farmers Home Administration—

51818 8-5-80 / Biomass energy and alcohol fuels loans and loan guarantees; Macon, Georgia, 8-25; Des Moines, Iowa, 8-27; and Lubbock, Texas 8-29-80

DEFENSE DEPARTMENT

Engineers Corps, Army Department—

53507 8-12-80 / Draft environmental impact statement to dispose of DOD stocks of DDT, Washington, D.C., 8-28-80

Navy Department—

41691 6-20-80 / Naval Discharge Review Board, Atlanta, Ga., Tampa, Fla., Chicago, Ill., 8-18 through 8-29

[*See also* 45 FR 28793, 4-30-80]

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

46075 7-9-80 / Energy Conservation Program for Consumer Products, Chicago, Ill., 8-25 through 8-29-80

[Originally published at 45 FR 44086, 6-30-80]

Economic Regulatory Administration—

50384 7-29-80 / Special Temporary Public Interest Exemptions, Washington, D.C. (open), 8-25-80

48646 7-21-80 / Synthetic natural gas (SNG) feedstock allocation; price-decontrolled naphtha exemption and removal of restrictive criteria on propane, Washington, D.C., 8-26-80

Federal Energy Regulatory Commission—

51219 8-1-80 / High-cost natural gas: Production enhancement procedures, Washington, D.C., 8-26-80

Western Area Power Administration—

50412 7-29-80 / Boulder City Area Preliminary Consolidated Power Marketing Criteria, Las Vegas, Nevada (open), 8-29-80

ENVIRONMENTAL PROTECTION AGENCY

49298 7-24-80 / Utah $SO_2$ Control Strategy, approval and promulgation of implementation plan, Salt Lake City, Utah, 8-27-80

49110 7-23-80 / Visibility protection for Federal Class I areas; guideline availability, Washington, D.C. 8-25-80

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

53183 8-11-80 / Consideration of surface and underground mining preformance standards, Washington, D.C. 8-29-80

INTERNATIONAL TRADE COMMISSION

41244 6-18-80 / Certain iron-metal castings from India, San Francisco, Calif., 8-27-80

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

51016 7-31-80 / Uniform procurement system, Cambridge, Mass., 8-25 and 8-26-80

POSTAL RATE COMMISSION

47773 7-16-80 / Basic mail classification reform schedule, 1970, Washington, D.C., 8-27-80

TRANSPORTATION DEPARTMENT

Coast Guard—

49426 7-24-80 / Bridge across gulf Intracoastal Waterway, Mile 134.0, West of Harvey Lock, New Iberia, La., 8-27-80

WATER RESOURCES COUNCIL

48800 7-21-80 / State Water Management Planning, program guidelines, Kansas City, Mo., 8-26-80, and Washington, D.C., 8-28-80

## List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today List of Public Laws.

Last Listing August 14, 1980

## Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

RULES GOING INTO EFFECT

54028 8-14-80 / Commerce/Sec'y—Cooperative generic Technology Program; procedures; effective 8-14-80

54004 8-13-80 / ED—Emergency School Aid Act; final regulations; for effective date call or write Department of Education

53996 8-13-80 / ED—Territorial Teacher Training Assistance Program; final regulations; for effective date call or write Department of Education

53411 8-11-80 / ED/MSI—Regulations implementing Government in the Sunshine Act and establishing regulations for awarding of grants to museums (2 documents); effective 8-11-80

53382 8-11-80 / EPA—Municipal wastewater treatment works; construction grants limitations provided in Clean Air Act; policy and procedures; effective 8-11-80

53806 8-13-80 / HHS/Sec'y—Nomenclature changes in Code of Federal Regulations reflecting departmental reorganization; effective 5-4-80

53772 8-12-80 / Justice/LEAA—Formula grants for junvenile justice; effective 8-12-80

54036 8-14-80 / Justice/OJARS—Rules for nondiscrimination in Federally assisted programs; effective 8-14-80

54638 8-15-80 / USDA/FNS—Food Stamp Workfare demonstration project; effective 5-26-80

DEADLINES FOR COMMENTS ON PROPOSED RULES

54000 8-13-80 / ED/Precollege Teacher Development in Science Program; comments by 9-12-80

53187 8-11-80 / EPA—Proposed provisions implementing the municipal wastewater treatment works construction grants program and the National Environmental Policy Act; comments by 10-10-80

53492 8-12-80 / HHS/PHS—Project grants to states for hypertension control services; comments by 10-14-80

53610 8-12-80 / Labor/ETA—Employment transfer and business competition determinations under the Rural Development Act; comments by 8-26-80

APPLICATIONS DEADLINES

54640 8-15-80 / USDA/FNS—Food Stamp program; Demonstration research, and evaluation projects; apply by 9-15-80

54120 8-14-80 / Commerce/MBDA—Financial assistance application announcement; apply by 9-16-80

53506 8-12-80 / Commerce/MBDA—Financial assistance application announcement; applications by 9-4-80

MEETINGS

54142 8-14-80 / HHS/ADAMHA—National Advisory Mental Health Council, Bethesda, Md. (open) 9-16-80, (closed) 9-17 and 9-18-80

54142 8-14-80 / HHS/ADAMHA—National Advisory Council on Drug Abuse, Rockville, MD. (open) 9-25-80, (partially open) 9-26-80

54142 8-14-80 / HHS/ADAMHA—National Advisory Council on Alcohol Abuse and Alcoholism, Bethesda, Md. (open) 9-22-80, (closed) 9-23-80

53876 8-13-80 / HHS/NIH—Bladder and Prostatic Cancer Review Committee, Boston, Mass. (partially open), 9-8 and 9-9-80

53876 8-13-80 / HHS/NIH—Bladder and Prostatic Cancer Review Committee, Buffalo, N.Y. (open), 9-22-80

53877 8-13-80 / HHS/NIH—Cancer Cause and Prevention Division, Board of Scientific Counsellors, Bethesda, Md. (open), 9-29 and 9-30-80

53876 8-13-80 / HHS/NIH—Cancer Control and Rehabilitation Division, Board of Scientific Counsellors, Bethesda, Md. (open), 9-18 and 9-19-80

53876 8-13-80 / HHS/NIH—Cancer Research Manpower Review Committee, Bethesda, Md. (partially open), 9-25 and 9-26-80

53876 8-13-80 / HHS/NIH—National Cancer Advisory Board, Subcommittee on Centers and Construction, Bethesda, Md. (open), 9-25 and 9-26-80

53876 8-13-80 / HHS/NIH—National Cancer Advisory Board, Working Group on Board Activities and Agenda, Bethesda, Md. (open), 8-28-80

53876 8-13-80 / HHS/NIH—National Cancer Institute, Large Bowel and Pancreatic Cancer Review Committee (Large Bowel Subcommittee), Houston, Tex. (partially open), 9-3 through 9-5-80

53877 8-13-80 / HHS/NIH—President's Cancer Panel, Bethesda, Md. (open), 8-29-80

53851 8-13-80 / NFAH—Design Arts Panel (Design Demonstration), Washington, D.C. (closed), 9-3 and 9-4-80

54491 8-15-80 / NSF—Information Science and Technology Advisory Committee, Washington, D.C. (partially open), 9-4 and 9-5-80

OTHER ITEMS OF INTEREST

53782 8-12-80 / ED—Program of Research grants on organizational processes in education

53220 8-11-80 / HHS/PHS—Privacy Act of 1974; proposed new routine use in systems of records

54472 8-15-80 / Labor/ETA—Voluntary reallocation of funds under Title II-D of the Comprehensive Employment and Training Act

54194 8-14-80 / Justice/LEAA—Proposed policy and criteria for de minimus exceptions to full compliance with the Deinstitutalization Requirement of Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended

54471-54472 8-15-80 / Labor/ETA—Reallocation of funds under Title II-D of the Comprehensive Employment and Training Act

53930 8-13-80 / LSC—Grant application under consideration; Legal Aid of Western Oklahoma, Inc.

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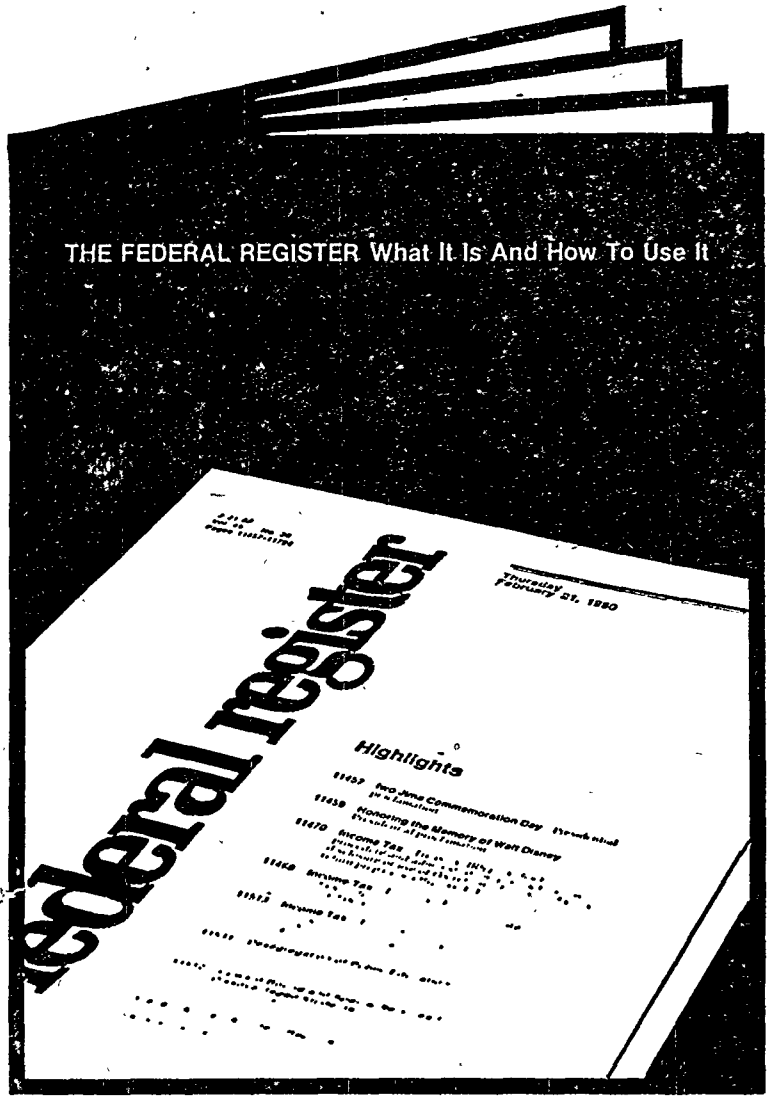


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